

United States
Circuit Court of Appeals
For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

PORTERVILLE CITRUS ASSOCIATION, a Corporation,

Appellant,

vs.

FRED STEBLER,

Appellee.

VOLUME I.
(Pages 1 to 384, Inclusive.)

Upon Appeal from the United States District Court
for the Southern District of California,
Northern Division.

Filed

JUL 3 - 1917

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Citation.

UNITED STATES OF AMERICA,—ss.

The President of the United States to Fred Stebler,
GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty (30) days from the date hereof, pursuant to an order allowing an appeal entered and of record in the clerk's office of the United States District Court for the Southern District of California, Northern Division, in suit in Equity No. A-44 therein, and wherein you are the complainant and appellee and Porterville Citrus Association is defendant and appellant, to show cause, if any there be, why the decree of said Court made and entered therein enjoining defendant and appellant as in said decree set forth, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable OSCAR A. TRIPPET,
United States District Judge for the Southern District of California, Southern Division, this 21st day of November, 1916.

TRIPPET,
United States District Judge.

Due service of a copy of the above Citation is hereby acknowledged this 21st day of November, 1916.

FREDERICK S. LYON,
Solicitor for Complainant and Appellee. [5*]

[Endorsed]: No. A-44. United States Circuit Court of Appeals for the Ninth Circuit. Porterville

*Page-number appearing at foot of page of original certified Transcript of Record.

Citrus Association, Appellant, vs. Fred Stebler, Appellee. Citation. Filed Nov. 21, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [6]

Names and Addresses of Attorneys.

For Appellant:

NICHOLAS A. ACKER, Esq., Foxcroft Building, 68 Post Street, San Francisco, California.

For Appellee:

FREDERICK S. LYON, Esq., 504-507 Merchants Trust Building, Los Angeles, California. [7]

In the District Court of the United States of America, in and for the Southern District of California, Northern Division.

No. A-44—IN EQUITY.

FRED STEBLER,

Complainant,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant. [8]

United States District Court, Southern District of California, Northern Division.

IN EQUITY.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

Bill of Complaint for Infringement of Letters Patent.

Now comes Fred Stebler, a citizen, resident and inhabitant of the city of Riverside, State of California, plaintiff, who files this his Bill of Complaint against Porterville Citrus Association, a corporation, a citizen, inhabitant and resident of the city of Porterville, California, and complaining shows and alleges:

I.

That the ground upon which this Court's jurisdiction depends is that this is a suit in equity arising under the patent laws of the United States.

II.

That defendant, Porterville Citrus Association, is a corporation organized and existing under and by virtue of the laws of the State of California and has its principal place of business at Porterville, California.

III.

That heretofore, to wit, prior to April 28, 1902, one Robert Strain, then of Fullerton, California, was the original, first and sole inventor of a new and useful invention, to wit, a fruit grader, and on that day made application in due form of [9] law to the Government of the United States for the grant, issuance and delivery to him of letters patent of the United States therefor; that thereafter and prior to June 9, 1903, by an instrument in writing in due form of law duly signed by said Robert Strain and by him delivered to plaintiff, Fred Stebler, and Austin A. Gamble, the said Robert Strain did sell, assign, transfer and set over unto plaintiff and the said Austin A.

Gamble the full and exclusive right, title and interest in and to the said invention and in and to the letters patent to be granted and issued therefor and did authorize and request the Commissioner of Patents to issue said letters patent jointly to plaintiff and the said Austin A. Gamble; that said instrument in writing was prior to June 9, 1903, duly and regularly recorded in the United States Patent Office; that thereafter such proceedings were duly and regularly had and taken in the matter of such application that, to wit, on June 9th, 1903, Letters Patent of the United States of America, No. 730,412, were duly and regularly granted and issued and delivered by the Government of the United States of America to your orator and the said Austin A. Gamble, whereby there was granted and secured to your orator and the said Austin A. Gamble, their heirs, legal representatives and assigns, for the full term of seventeen years (17), from and after said 9th day of June, 1903, the sole and exclusive right, liberty and privilege of making, using and vending to others to be used the said invention throughout the United States of America and the territories thereof; that the said letters patent were duly issued in due form of law under the seal of the United States Patent Office and duly signed by the Commissioner of Patents, all as will more fully appear from said original letters patent or a duly certified copy thereof which are ready in court to be produced by your [10] orator, as may be required; and that prior to the grant, issuance and deliverance of the said letters patent all proceedings were had and taken which were required by law

to be had and taken prior to the issuance of letters patent for new and useful inventions.

IV.

And your orator further shows unto your Honors that on October 12th, 1903, the said Robert Strain and your orator and the said Austin A. Gamble discovered for the first time that the said letters patent were inoperative and insufficient and that the errors which rendered said letters patent No. 730,412 so inoperative and insufficient arose from the inadvertence, accident and mistake of the Commissioner of Patents of the United States and without any fraudulent intention on the part of the said Robert Strain or upon the part of your orator, or upon the part of said Austin A. Gamble; that said inadvertence, accident and mistake upon the part of the said Commissioner of Patents of the United States consisted in this, that after the said Robert Strain had duly filed in the United States Patent Office his application for letters patent upon the said fruit grader, as aforesaid, one Charles Rayburn, did on August 18th, 1902, file in the United States Patent Office an application for letters patent upon said new and useful fruit grader and in said application did make certain claims as the original, true and first inventor thereof; that through the inadvertence, accident and mistake of the Commissioner of Patents a patent was issued to the said Charles Rayburn therefor, said letters patent being numbered 726,756, and were granted, issued and delivered to the said Charles Rayburn on April 28th, 1903, and while the said Robert

Strain's application for letters patent pending in the United States Patent Office, as aforesaid, [11] and the Commissioner of Patents did by inadvertence, accident and mistake fail and neglect to give notice to the said Robert Strain, or your orator, or said Austin A. Gamble, of said Charles Rayburn's application for letters patent upon said fruit grader, and did fail and neglect to declare an interference proceeding between said Robert Strain and Charles Rayburn or the application of said Robert Strain and Charles Rayburn for letters patent upon said fruit grader, and did fail and neglect to determine whether the said Robert Strain or the said Charles Rayburn was the original, first and sole inventor of said fruit grader, and did fail and neglect to determine the question of priority of invention between said Robert Strain and said Charles Rayburn; that said Robert Strain and your orator and the said Austin A. Gamble first discovered this inadvertence, accident and mistake upon the part of the Commissioner of Patents on October 12th, 1903, and did forthwith and immediately direct their attorneys to prepare an application for a reissue patent upon said Robert Strain's said invention in fruit grader; that said Robert Strain did make due application in writing, in due form of law, for a reissue of said letters patent, which said application was filed in the United States Patent Office on October 21st, 1903, by the said Robert Strain with the full consent and allowance of your orator and the said Austin A. Gamble, and that thereafter due proceedings were

had in the United States Patent Office in accordance with the statutes in such cases made and provided, and in accordance with the rules of the United States Patent Office, and that said Robert Strain was adjudged to be the original, first and sole inventor of said fruit grader and judgment of priority of invention was rendered and entered in the United States Patent Office in favor of Robert Strain and against said Charles Rayburn; and [12] thereafter, to wit, on December 27th, 1904, the said Robert Strain and your orator and the said Austin A. Gamble having in all respects complied with the Acts of Congress in such case made and provided, and having surrendered the said original letters patent No. 730,412, said letters patent were cancelled and new or amended letters patent which were marked "Reissue No. 12,297" were on the 27th day of December, 1904, in due form of law, granted, issued and delivered to your orator and the said Austin A. Gamble, which said reissue letters patent are of record in the Patent Office of the United States, as will more fully and at large appear from said original reissued letters patent or a duly certified copy thereof ready here in court to be produced, whereby there was granted and secured to your orator and the said Austin A. Gamble, their heirs, legal representatives and assigns, for the full term of seventeen years (17), from and after the 9th day of June, 1903, the sole and exclusive right, liberty and privilege of making, using and vending the said invention as described and claimed in said reissued letters patent throughout the United States of America and the territories thereof.

V.

And your orator further shows unto your Honors that the said invention so set forth, described and claimed in and by the said letters patent aforesaid is of great value and has been extensively practiced by your orator and by your orator and the said Austin A. Gamble, and that since the grant, issuance and delivery of the said letters patent the said fruit grader has gone into great and extensive use and your orator and said Austin A. Gamble have sold large numbers thereof and the same has subsequently displaced all other forms of devices for said purpose and become the standard fruit grader, and upon each and [13] every one of said fruit graders manufactured, used or sold by your orator or by your orator and said Austin A. Gamble, as aforesaid, your orator, and your orator and the said Austin A. Gamble have marked in bold and conspicuous letters the word "Patented" together with the day and date of issuance of said letters patent, to wit, June 9th, 1903, and December 27th, 1904, thereby notifying the public of said letters patent, and the trade and public have generally respected and acquiesced in the validity and scope of said letters patent and of the exclusive rights of your orator, and of your orator and said Austin A. Gamble therein and thereunder, and but for the wrongful and infringing acts of defendant, as hereinafter set forth, your orator would now continue to enjoy the said exclusive rights and the same would be of great and incalculable benefit and advantage of your orator, and the said defendant

has been, long prior to the commencement of this suit, notified in writing of the great, issuance and delivery of the said letters patent and of the rights of your orator thereunder, and has had full knowledge of your orator's said rights under said letters patent, and demand has been made upon defendant to respect the said letters patent and not to infringe thereon, but notwithstanding such notice the defendant have continued to make, use and sell fruit graders embodying the said invention, as hereinafter more particularly set forth.

VI.

Your orator further shows unto your Honors that heretofore, to wit, prior to the first day of January, 1910, by an instrument in writing in due form of law, duly signed by the said Austin A. Gamble, and delivered by him to your orator, the said Austin A. Gamble did sell, assign, transfer and set over unto your orator, his heirs and assigns, all his right, title [14] and interest in and to the said fruit grader invention and in and to the said letters patent aforesaid granted and issued therefor, and did thereby sell, assign, transfer and set over unto your orator, and vest in your orator, and your orator did become the sole and exclusive owner of the full and exclusive right, title and interest in and to the said fruit-grader invention and in and to the letters patent granted and issued therefor, all as will more fully and at large appear from said original instrument in writing or a duly certified copy thereof ready in court to be produced as may be required.

VII.

That heretofore, to wit, in May, 1910, plaintiff filed in the United States Circuit Court for the Southern District of California, his certain Bill of Complaint in Equity wherein plaintiff and complainant and Riverside Heights Orange Growers Association and George D. Parker were defendants; that in said Bill of Complaint the invention of Robert E. Strain of the fruit grader hereinbefore referred to and the various proceedings herein before set forth had and taken by said Robert Strain and plaintiff and plaintiff's assignor, Austin A. Gamble, in the United States Patent Office eventuating in the grant, issuance and delivery of the letters patent reissue No. 12,297 were set up and pleaded and the assignment of said reissued letters patent to plaintiff and plaintiff's ownership thereof were likewise pleaded; that the infringement thereof by defendants, Riverside Heights Orange Growers Association and George D. Parker, by the making, selling and using of machines embodying and containing said invention in infringement of plaintiff's rights under said letters patent and without the license, consent or authority of plaintiff was pleaded and set up and an injunction prayed against the continuance by defendants [15] or either of them of such infringement and for the recovery of profits and damages, all as in and by said original Bill of Complaint or a duly certified copy thereof in court ready to be produced, and may be required, will more fully and at large appear; that thereafter defendants filed their Answer and said Bill of Complaint and suit were determined on the

pleading and proofs adduced and an interlocutory decree and a final decree entered by this Court in said cause ordering, adjudging and decreeing that said reissue letters patent No. 12,297 and claims 1 and 10 thereof in particular were valid and had been infringed by said defendants and that plaintiff was the sole owner thereof, and that said defendants be enjoined as prayed for in the Bill of Complaint all as more fully and at large will appear from said original Answer, Interlocutory Decree, Final Decree and files, records and proceedings of this Court in said suit ready in court to be produced as may be required.

VIII.

That heretofore, to wit, prior to May 12, 1908, plaintiff was the original, first and sole inventor of a certain new and useful distributing apparatus, and on that day made application in due form of law to the Government of the United States for the grant, issuance and delivery to him of letters patent of the United States therefor; that after due proceedings had and taken thereafter, to wit, on December 21, 1909, letters patent of the United States No. 943,799 were granted, issued and delivered to him in due form of law by the Government of the United States, that thereby there was granted and secured to plaintiff, his heirs, legal representatives and assigns the sole and exclusive right, liberty and privilege of making, using and vending the said invention throughout the United States of America and the territories thereof during the period of seventeen [16] years (17) from and after December 21, 1909, all as in and by said original letters patent or a duly certified copy

thereof ready in court to be produced as may be required will more fully and at large appear; that a more particular description of the said invention patented in and by said letters patent will fully appear in and from the said letters patent.

IX.

That the trade and public have generally acquiesced in and acknowledged the validity of said reissued letters patent No. 12,297, and said letters patent No. 943,799, in and to the exclusive rights of plaintiff thereunder and under each thereof.

X.

That the said fruit graders set forth, described and claimed and covered in and by said reissue letters patent No. 12,297, and the said distributing apparatus set forth in and by said letters patent No. 943,799, are capable of embodiment in and conjoint use in one and the same apparatus and are so embodied in and conjointly used in each of the machines and apparatus caused to be made and used by defendant; that all of the fruit graders and all of the distributing apparatus manufactured, used or sold by plaintiff, or manufactured, used or sold by plaintiff's assignors or licensees, have been marked with the word "Patented" together with the day and date of said respective letters patent, to wit, "December 27th, 1904, and December 21st, 1909," respectively; and the said defendant has been notified in writing by plaintiff that the machines and apparatus caused to be made and used by defendant are infringements of said letters patent, and each thereof, and demand has been made upon said defendant to cease the making

or use thereof; that defendant refuses to refrain from using said infringing machines and apparatus.

[17]

XI.

That heretofore, to wit, on August 29th, 1910, plaintiff filed in the United States Circuit Court for the Southern District of California in an action at law, his DECLARATION OF TRESPASS on the case wherein this plaintiff was plaintiff and the Pioneer Fruit Company was defendant; that in said declaration the invention by Robert Strain of the fruit grader herein before referred to and the various proceedings hereinbefore set forth, had and taken by said Roberts Strain and by your orator and your orator's said assignor, Austin A. Gamble, in the United States Patent Office eventuating in the grant, issuance and delivery of said reissue letters patent No. 12,297 were set up and pleaded and the assignment of said reissued letters patent to plaintiff and plaintiff's ownership thereof were likewise pleaded; that prior to August 29th, 1910, the defendant, Pioneer Fruit Company, had caused to be made and used machines conjointly, embodying and containing said invention in infringement of your orator's rights in and under said respective patents and without the license, consent or authority of plaintiff and damages because of such infringement were demanded, all as in and by said original Declaration or a certified copy thereof ready in court to be produced will more fully and at large appear; that defendant, Pioneer Fruit Company, duly appeared and answered in said action at law and that said action at law was on June

28th, 1911, called for trial before his Honor Olin Wellborn, United States District Judge, without a jury, a jury having been waived by the parties, and on July 10th, 1911, this court filed its Findings of Fact and Conclusions of Law, wherein it was found that Robert Strain was the original, first and sole inventor of the fruit grader set forth in claims 1 and 10 of said reissue patent and that said reissue letters [18] patent, and said claims 1 and 10 thereof in particular, were valid letters patent and claim; that plaintiff was the owner of said letters patent; that the machines caused by the defendant, Pioneer Fruit Company, to be made and used prior to August 29th, 1910, were and are infringements upon said letters patent and upon each of the claims thereof specifically referred to in this paragraph of this Bill of Complaint, and that plaintiff was the owner of the exclusive right to said respective letters patent and was entitled to judgment against defendant for the sum of Three Hundred and Seventy-seven Dollars (\$377) and costs, by reason of such infringement, and judgment for said sum was entered and docketed in favor of this plaintiff and against said defendant, all as will more fully and at large appear as in and by the Findings of Fact and Conclusions of Law and judgment rendered in said action at law, No. 207, aforesaid, the original of which or duly certified copies, are ready in court to be produced as may be required.

XII.

That since the grant, issuance and delivery of said letters patent respectively and within the six

months last past and within the Southern District of California, the defendant without the license or consent of plaintiff has caused to be made and is now engaged in using machines and apparatus embodying the said respective patented inventions patented in and by said respective letters patent, and that each of the machines so caused to be made and so used and now being used by defendant as aforesaid contains within it each of the said respective purposes and defendant intends to continue the use of said machines and apparatus embodying the said respective inventions in defiance of and without the license or consent of plaintiff under either of said letters patent, and will continue so to do unless restrained [19] and enjoined by this Court, and has realized and is now realizing large profits and advantages from said infringement and unlawful acts, and plaintiff has suffered and is suffering great and irreparable damage and injury; that the exact amount of such profit or of such damage is to plaintiff unknown, and plaintiff therefore prays that an accounting may be taken of the profits, advantages and damages, and that defendant be ordered and directed to account to and pay over to plaintiff the profits so realized by defendant and the damages suffered by plaintiff by reason of such unlawful acts.

XIII.

That plaintiff has requested defendant to cease and desist from infringing upon said letters patent and to account to plaintiff for said profits and damages, and to cease the use of such infringing machines and apparatus, but that defendant has di-

rectly refused so to do and has refused to comply with such request or any part thereof.

XIV.

That for a valuable consideration to defendant in hand paid and received by the defendant, the defendant has covenanted and agreed that each of said letters patent are valid and has acquiesced in the validity of each of the said letters patent by an instrument in writing executed by defendant and by defendant delivered to plaintiff and is thereby estopped from denying the validity of either of said letters patent.

WHEREFORE plaintiff prays: 1. That upon the filing of this Bill a preliminary injunction be granted to plaintiff enjoining and restraining the defendant, its officers, attorneys, servants, employees, agents, workmen and associates and each and every thereof from making, selling [20] or using or offering for sale or advertising or contracting to make or use in any manner directly or indirectly any machine or device or apparatus containing either of the inventions patented in or by said respective letters patent reissue No. 12,297 and No. 943,799 aforesaid, or any machine or device capable of being used in infringement of either of said letters patent and from directly or indirectly infringing upon said letters patent in any manner whatsoever and from aiding, abetting or contributing to in such infringement whatsoever, and that said writ of injunction be issued out of and under the seal of this Court and upon the final hearing the said writ of injunction be made permanent and final.

2. That it be ordered, adjudged and decreed that plaintiff have and recover from defendant all the profits and advantages realized by the defendant and all the damages sustained by the plaintiff by reason of the infringement aforesaid, together with the costs of said suit and such other further or different relief as to this Court may seem proper and be in accord with equity and good conscience.

FRED STEBLER.

FREDERICK S. LYON,

Solicitor and of Counsel for Plaintiff. [21]

State of California,
County of Riverside,—ss.

Fred Stebler, being first duly sworn, on oath says that he is the plaintiff in the above-entitled suit and has read the foregoing Bill of Complaint and knows the contents thereof; that the same is true to his own knowledge.

FRED STEBLER.

Subscribed and sworn to before me, this 3d day of November, 1915, at Riverside, California.

M. J. TWOGOOD,

Notary Public in and for the County of Riverside,
State of California.

[Endorsed]: No. A-44-Eq. United States District Court, Southern District of California, Northern Division. Fred. Stebler, Plaintiff, vs. Porter-ville Citrus Association, Defendant. In Equity. Bill of Complaint. Filed Nov. 4, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Frederick S. Lyon, 504-7 Merchants Trust

Building, Los Angeles, Cal., Solicitor for Plaintiff.
[22]

In the United States District Court, Southern District of California, Northern Division.

IN EQUITY—No. A-44.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

Answer.

Now comes the defendant to the above-entitled suit and for answer to the plaintiff's bill of complaint herein denies, admits and avers as follows:

I.

Admits that the ground upon which the Court's jurisdiction depends is that this is a suit in equity arising under the patent laws of the United States.

II.

Admits that the defendant, Porterville Citrus Association, is a corporation organized and existing under and by virtue of the laws of the State of California, and has its principal place of business at Porterville, California.

III.

Admits the allegations contained in Paragraphs III and IV of the bill of complaint herein on file.

IV.

Admits the allegations contained in Paragraph V of the bill of complaint herein on file, excepting in so far as the same alleges that the invention of re-

issue letters patent No. 12,297 has displaced all other forms of devices for the purposes set forth in the [23] said letters patent, and that the same has become the standard fruit grader; and denies in this connection that it has manufactured, used or sold fruit graders embodying the said invention; and denies that but for the acts of this defendant, the plaintiff herein would now continue to enjoy any exclusive right which would be of great and incalculable benefit and advantage to the plaintiff, as set forth in paragraph V of the bill of complaint herein on file.

V.

Answering paragraphs VI and VII of the bill of complaint herein on file defendant avers that it has no knowledge, information or belief on the subject thereof sufficient to enable it to make answer to the allegations thereof, or any of them, and leaves plaintiff to make such proof thereof as he may be advised is proper.

VI.

Denies that in any manner whatsoever it has infringed, either by making, using or selling fruit-grading machinery, any of the rights conferred upon the plaintiff herein by protection afforded under the claims of the said reissue letters patent No. 12,297.

VII.

And for a further and separate defense in respect to the said reissue letters patent No. 12,297, defendant avers that, by reason of the prior state of the art as it existed long prior to the date of the alleged invention of the said reissue letters patent No. 12,297, the said invention embraced in the said alleged re-

issue letters patent is so restricted as to preclude the fruit grader used by the defendant falling within the protection afforded by the claims of the said reissue letters patent; and in this connection the defendant alleges the prior art to be set forth and disclosed by the following letters patent: [24]

Name of Patentee.	Number of Patent.	Date of Patent.
H. H. Hutchins	456,092	July 14, 1891
H. B. Stevens	247,428	Sept. 20, 1881
J. T. Ish	458,422	Aug. 25, 1891
J. A. Jones	430,031	Oct. 10, 1890
M. P. Richards	654,281	July 24, 1900
H. H. Hutchins	456,092	July 14, 1891
A. Cerruti	534,783	Feb. 26, 1895
J. J. White	731,828	June 23, 1903
B. H. Vellines	364,977	June 14, 1887
C. D. Nelson	713,484	Nov. 11, 1902

VIII.

Answering Paragraph VIII of the bill of complaint herein on file, defendant avers that it has no knowledge, information or belief on the subject thereof sufficient to enable it to make answer to the allegations thereof, or any of them, and leaves plaintiff to make such proof thereof as he may be advised is proper.

IX.

Denies that the trade and public have generally acquiesced in and acknowledged the validity of the said reissue letters patent No. 12,297 and letters patent No. 943,799, in and to the exclusive rights of plaintiff thereunder and under each thereof.

X.

Denies that the fruit grader set forth, described and claimed and covered in and by reissue letters patent No. 12,297, and the distributing apparatus set forth in and by said letters patent No. 943,799, are capable of embodiment and conjoint use in one and the same apparatus; and denies that the same are so embodied and conjointly used in the machines and apparatus used [25] by this defendant; and denies that it has refused to refrain from using any machine which is an infringement of the protection afforded by either or both of the said letters patent.

XI.

Answering paragraph XI of the bill of complaint herein on file, defendant avers that it has not sufficient knowledge, information or belief on the subject thereof to enable it to make answer to the allegations thereof, or any of them, and leaves plaintiff to make such proof thereof as he may be advised is proper.

XII.

Denies that it has caused to be made and is now engaged in using machines and apparatus embodying said respective patented inventions patented in and by the said reissue letters patent No. 12,297 and letters patent No. 943,799 set forth in the bill of complaint herein on file; and denies that the machine which it is now using contains within it the invention or inventions of each of the said respective letters patent; and denies that it intends to continue the use of any machine or apparatus which has embodied therein the respective inventions of the said letters patent; and denies that it will continue to use any

machine or machines infringing either or both of the said letters patent unless restrained and enjoined by this Court; and denies that it has realized and is now realizing large profits and advantages from said alleged infringing and unlawful acts; and denies that the plaintiff has suffered and is now suffering great and irreparable damage and injury by reason of any act committed by this defendant, as set forth in paragraph XII of the bill of complaint herein on file.

XIII.

Denies that it has refused and still refuses to account to the plaintiff herein for any profits and damages resulting by any [26] act of infringement committed by this defendant; and in this connection denies that it has committed any such act of infringement.

XIV.

Answering paragraph XIV of the bill of complaint on file herein, defendant avers that it has not sufficient knowledge, information or belief on the subject thereof to enable it to make answer to the allegations thereof, and therefore leaves the plaintiff to make such proof thereof as he may be advised is proper.

XV.

And for a further and separate defense in respect to the alleged letters patent No. 943,799 in suit herein, defendant avers that Fred Stebler, mentioned in the bill of complaint as the inventor of the device patented in and by said letters patent, was not the original, first or sole inventor of the thing sought to be patented in and by said letters patent No. 943,799,

or any material or substantial part thereof; but on the contrary, long prior to and before the alleged invention or discovery thereof by the said Fred Stebler, the thing attempted to be patented in and by said letters patent had been patented in and by certain letters patent issued by the Government of the United States on the following named dates and bearing the following numbers, viz.:

Name of Patentee.	Number of Patent.	Date of Patent.
W. C. Anderson	Reissue 12,459	Feb. 27, 1906.
H. A. Beekhuis	906,605	Dec. 15, 1908.
Thomas Strain	775,015	Nov. 15, 1904.
C. Rayburn	741,928	Oct. 20, 1903.
G. D. Parker	958,164	May 17, 1910.
F. F. Backstrom	835,805	Nov. 13, 1906.

XVI.

That the said Fred Stebler was not the original, or first, [27] or sole inventor of the thing sought to be patented in and by said letters patent No. 943,799, or any material or substantial part thereof, but that long prior to the date of the supposed invention and discovery thereof by the said Fred Stebler, the same was known to and used by various persons and corporations whose names are at this time unknown to this defendant and cannot be specified at this time, and defendant prays leave of the Court to amend this answer by specifying the names of such parties as soon as defendant ascertains them.

XVII.

And further answering, defendant avers upon information and belief that the said letters patent No. 943,799, mentioned in plaintiff's bill of complaint herein on file, are void and of no effect for the reason

that it did not require the exercise of the inventive faculty to produce the same, but only mechanical skill such as is possessed by persons skilled in the particular art to which the same refers.

WHEREFORE, having fully answered, defendant prays to be hence dismissed with its costs in this behalf sustained.

N. A. ACKER,
Attorney for Defendant. [28]

State of California,
County of Tulare,—ss.

John A. Milligan, being first duly sworn, on oath says: That he is the Secretary and Manager of the defendant corporation in the above-entitled suit, and that he has read the foregoing answer to the plaintiff's bill of complaint herein; that the same is true of his own knowledge except as to such matters and things as are therein stated on information and belief, and that as to the latter, he believes the same to be true.

JOHN A. MILLIGAN.

Subscribed and sworn to before me this 27 day of November, 1915.

[Seal] I. F. WRIGHT,
Notary Public in and for the County of Tulare, State
of California.

[Endorsed]: In Equity—No. A-44. U. S. District Court, Southern District of California, Northern Division. Fred Stebler, Plaintiff, vs. Porterville Citrus Association, Defendant. Answer. Filed Dec. 3, 1915. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Nicholas A. Acker, At-

torney at Law, Foxcroft Building, 68 Post Street,
San Francisco, Cal., for Defendant. [29]

*In the United States District Court, Southern Dis-
trict of California, Northern Division.*

IN EQUITY—No. A-44.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

Amendment to Answer.

The Answer of the defendant on file herein is
hereby amended as follows:

Page 3 of the Answer, between lines 12 and 14
thereof insert—

R. M. Widney.....788,619.....May 2, 1905.

Further answering this defendant denies that the
said Robert Strain was the original, first or sole in-
ventor or any inventor at all of the thing sought to
be patented in and by said reissue letters patent No.
12,297 or any material or substantial part thereof,
and in this connection states that long prior to the
supposed invention or discovery thereof by the said
Robert Strain, the same was known to and used by
the following persons and corporations, viz: Robert
M. Widney of Fernando, State of California; How-
ard B. Stevens of Citra, County of Marion, State of
Florida; M. A. Rice of Citra, County of Marion,
State of Florida; R. C. Douglass of Citra, County of
Marion, State of Florida; J. C. Greener of Citra,

County of Marion, State of Florida; A. S. Kells of Citra, County of Marion, State of Florida; Thordike C. Jameson of Corona, County of Riverside, State of [30] California; F. E. Proud of La Habra, State of California; used in the packing-house of W. H. Jameson, situated at Corona, County of Riverside, State of California, and was known to various other persons and corporations whose names and addresses are at this time unknown to this defendant and cannot be stated at this time, but defendant prays leave of the Court to amend this Answer by specifying the names of such parties as soon as the defendant ascertains the same.

Page 6, line 5, erase the word "various" and insert—H. A. Beekhuis of Hanford, Fresno County, State of California; L. E. Tucker of Upland, State of California; George D. Parker, of Riverside, County of Riverside, State of California; used by the California Fruit Canners Association in its packing-house situated at Hanford, County of Fresno, State of California; used by the Arlington Heights Fruit Company in its packing-house situated at Arlington, County of Riverside, State of California; used by the Upland Citrus Association in its packing-house situated at Upland, State of California, and known to and used by various other—

PORTERVILLE CITRUS ASS.

By N. A. ACKER,

Solicitor and Counsel for Deft. [31]

[Endorsed]: No. A-44. U. S. District Court, Southern District of California, Northern Division. Fred Stebler, Plaintiff, vs. Porterville Citrus Asso-

ciation, Defendant. Amendment to answer. Feby. 4, 1916. Received a copy of the within Amendment and same is stipulated and consented to. Frederick S. Lyon, Solr. for Plaintiff. Filed Apr. 4, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for Defendant. [32]

At a stated term, to wit, the July Term, A. D. 1916, of the District Court of the United States of America, in and for the Southern District of California, Northern Division, held at the courtroom thereof, in the city of Los Angeles, on Tuesday, the first day of August, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

Nos. A-44—EQUITY and A-50—EQUITY, Combined for Final Hearing.

FRED STEBLER,

Complainant,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

Minute Order of August 1, 1916.

Frederick S. Lyon, Esq., appearing as counsel for complainant, and no one appearing on behalf of defendant; Helena L. Hill and A. S. Custer being present as shorthand reporters of the proceedings, and acting as such; these combined causes having hereto-

fore been submitted to the Court for its consideration and decision, on the pleadings and proofs; the Court, having duly considered the same and being fully advised in the premises, now orally announces its conclusions, and it is ordered that counsel for complainant prepare in each cause a decree in accordance with the conclusions announced by the Court, granting the prayer of the Bill of Complaint as to infringement of the Stebler patent, except claim 4 thereof, and denying infringement of the Thomas Strain and Robert Strain patents; and it is further ordered, on motion of Frederick S. Lyon, Esq., of counsel for complainant, that all exhibits ~~used for illustrative purposes, other than exhibits filed, may~~ be removed from the clerk's office and returned to the storage warehouse from which they were brought to the court. [33]

Amended
by Order
of Dec.
12, 1916.
Chas. N.
Williams,
Deputy
Clerk.

*United States District Court, Southern District of
California, Northern Division.*

IN EQUITY—A-44.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

Decree.

The above-entitled suit, having come on regularly for hearing upon the evidence and proofs educed on behalf of the respective parties, Frederick S. Lyon, Esq., appearing on behalf of plaintiff and N. A.

Acker, Esq., on behalf of defendant, now upon due consideration thereof, it is

ORDERED, ADJUDGED AND DECREED,

1. That reissue letters patent of the United States No. 12,297, dated Dec. 27, 1904, are good and valid in law, particularly as to claims 1 and 10 thereof, and that plaintiff, Fred Stebler, is the owner thereof and of all the rights and privileges granted and secured thereby.

2. That letters patent of the United States No. 943,799, dated Dec. 21, 1909, are good and valid in law, particularly as to claims 1, 2, 3, 5, 6, 7, 8, 11, 14, 15 and 19; that plaintiff is the owner thereof and of all the rights and privileges granted and secured thereby. [34]

3. That the respective inventions set forth, described and claimed in and by said reissue letters patent No. 12,297 and said letters patent No. 943,799, are capable of embodiment in and conjoint use in one and the same apparatus or machine; that all the fruit graders and all of the distributing apparatus manufactured, used or sold by plaintiff or by plaintiff's assignors or licensees have been plainly and conspicuously marked with the word "Patented," together with the day and date of said respective letters patent, to wit, Dec. 27, 1904, and Dec. 21, 1909; that defendant prior to installing the machines hereinafter found to be an infringement was notified in writing by plaintiff that said machines were an infringement of said respective letters patent, and demand was made upon defendant that defendant cease the completion of said machines or the use thereof; that de-

fendant refused to refrain from using said infringing machines or any thereof.

4. That defendant has infringed upon said reissue letters patent No. 12,297, particularly as to claims 1 and 10 thereof and upon said letters patent No. 943,799, particularly as to claims 1, 2, 3, 5, 6, 7, 8, 11, 14, 15 and 19 thereof by causing to be erected in its packing-house at Porterville, California, by George D. Parker, of Riverside, California, and without the license or consent of plaintiff or plaintiff's assignor, certain fruit grading and distributing machines and using the same therein; that each of said combined fruit grading and distributing machines contains in it the invention set forth, described and claimed in and by said reissue letters patent No. 12,297, as particularly set forth in claims 1 and 10 thereof, and the invention set forth, described and claimed in and by said letters patent No. 943,799, as particularly set [35] forth in claims 1, 2, 3, 5, 6, 7, 8, 11, 14, 15, and 19 thereof; that this suit has been defended on behalf of defendant by and at the cost and expense of said George D. Parker, the manufacturer of said infringing machines.

5. That a perpetual injunction issue out of and under the seal of this Court directed to said defendant, Porterville Citrus Association, its officers, attorneys, agents, servants, workmen, clerks and associates, enjoining and restraining them and each and every of them from in any manner making, selling using or offering for sale, or advertising or contracting to make or use or sell or dispose of in any manner whatsoever, either directly or indirectly, any machine

or device or apparatus containing either the invention set forth, described and claimed in or by said reissue letters patent No. 12,297, as particularly set forth in claims 1 and 10 thereof, or in or by said letters patent No. 943,799, particularly as set forth in claims 1, 2, 3, 5, 7, 8, 11, 14, 15 and 19 thereof or any machine or device capable of being used in infringement of either of said letters patent, and from directly or indirectly infringing upon either of said letters patent in any manner whatsoever, or from aiding or abetting or contributing to any such infringement in any manner whatsoever, and from any further use of the said machine so installed in its said packing-house at Porterville, California, by said George D. Parker; and from at any time whatsoever in any manner making use of those certain adjustable means whereby the roller sections may be adjusted toward or away from the grading belt; and from maintaining in any of said machines the slotted brackets by means of which the roller sections are supported unless the slots of such brackets are permanently sealed by some substance such as bab-bitt metal permanently fixing said brackets and rollers against adjustment. [36]

6. That complainant do have and recover judgment against defendant, Porterville Citrus Association, for the sum of \$333.32, plaintiff's costs and disbursements in this suit.

Dated Los Angeles, California, November 20, 1916.

OSCAR A. TRIPPET,

District Judge.

Decree entered and recorded November 20th, 1916.

WM. M. VAN DYKE,

Clerk.

By Chas. N. Williams,

Deputy Clerk.

[Endorsed]: No. A-44. United States District Court, Southern District of California, Northern Division. Fred Stebler, Plaintiff, vs. Porterville Citrus Association, Defendant. In Equity. Decree. Filed Nov. 20, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Frederick S. Lyon, 504-7 Merchants Trust Building, Los Angeles, Cal., Solicitor for Plaintiff. [37]

In the United States District Court, Southern District of California, Northern Division.

EQUITY SUIT—A-44.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

Notice of Taking Testimony.

To Fred Stebler and Frederick S. Lyon, Esq., His Solicitor, Merchants Trust Building, Los Angeles, California.

Gentlemen:

Please take notice that the defendant herein will take testimony of Howard B. Stevens; M. A. Rice; R. C. Douglass; J. C. Greener; A. S. Kells; H. M. Eichelberger; A. S. Lambert and J. W. Hagins, all

of whom reside at Citra, county of Marion, in the State of Florida, and probably others, for use on behalf of defendant at the trial of the above-entitled cause, before R K. Wartman, a notary public in and for the county of Marion, State of Florida (or some other officer authorized by law to take depositions), and not of counsel or attorney to either of the parties, nor interested in the event of this cause, at the office of said R. K. Wartmann, No. ———, at Citra, county of Marion, State of [38] Florida, on Tuesday, the 21st day of March, 1916, commencing at 10:30 o'clock in the forenoon; all of said witnesses residing more than one hundred miles from the place of trial herein and more than one hundred miles from any place at which a District Court of the United States for the Southern District of California, is appointed to be held by law.

Such testimony will be taken in accordance with the provisions of Sections 863, 864 and 865 of the Revised Statutes of the United States. Adjournment will be taken from day to day and at such times and place as may be necessary for the taking of the depositions without further notice.

You are invited to attend and cross-examine.

Very respectfully,

N. A. ACKER,

Solicitor and of Counsel for Defendant.

San Francisco, California, March 6, 1916.

[Endorsed]: No. A-44. U. S. District Court, Southern District of California, Northern Division. Fred Stebler, Plaintiff, vs. Porterville Citrus Association, Defendant. Notice of Taking Testimony.

Received a copy of the within notice this 8th day of March, 1916. Frederick S. Lyon, Solicitor for Complainant. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for Defendant. [39]

In the United States District Court, Southern District of California, Northern Division.

EQUITY SUIT—A-44.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

Depositions Taken at Citra, Florida, March 21, 1916.

Testimony taken on behalf of defendant for use on final hearing in the above-entitled cause, said testimony being taken in accordance with the Equity Rules of the United States Supreme Court, and under the provisions of Sections 863, 864, and 865 of the Revised Statutes of the United States.

Parties met pursuant to the annexed notice of taking testimony at the office of R. K. Wartmann, the officer named in the notice for the taking of the testimony, and adjourned to the rooms of the White House Hotel at Citra, Florida, this twenty-first day of March, 1916.

It is hereby stipulated by and between counsel for the respective parties to the above-entitled cause that the testimony taken in the foregoing suit No. A-44 may be used with the same force and effect in the suit No. A-45 pending in this court and en-

titled Fred Stebler vs. Mid-California Citrus Association, Defendant, A-45, and equally so in suit pending in this court entitled Fred Stebler vs. Porterville Citrus Association, Defendant, No. A-50, complainant to said action, however, reserving unto himself all exceptions [40] which may be had and taken to the testimony given in the foregoing suit A-44. A carbon copy of testimony given in the present case A-44 shall be filed as testimony in the cases. A-45 and A-50 first page of the carbon copies in said cases A-44 and A-50 to be properly entitled and identified by case number.

Present on behalf of Complainant, L. W. BALDWIN, Esq.

Present on behalf of Defendant, NICHOLAS A. ACKER, Esq.

It is stipulated that the notary need not remain in the room throughout the taking of the testimony of witnesses.

It is hereby stipulated by and between parties to the foregoing cause that printed uncertified copies of United States letters patent may be used throughout the taking of the depositions of witnesses and introduced in evidence in connection with said depositions, and to be hereinafter withdrawn and replaced by a duly certified copy.

Deposition of Howard B. Stevens, for Defendant.

HOWARD B. STEVENS, a witness produced on behalf of defendant, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testifies in response to interrogatories propounded by counsel for the defendant as follows:

(Deposition of Howard B. Stevens.)

Q. 1. Will you please state your name, age, residence and occupation?

A. Howard B. Stevens, age, 65, DeLand, Fla., general manager of the Stetson Estate.

Q. 2. Please state in general the character of your work as manager of the Stetson estate and for what length of time you have occupied such position.

A. The bulk of my duties raising and marketing oranges. [41]

Q. 3. You have only partly answered the previous question and I will ask that the same will be reread to you. A. Nearly 17 years.

Q. 4. For what length of time have you resided at DeLand, Florida? A. 17 years.

Q. 5. Where did you reside prior to moving to DeLand, Florida? A. Citra, Florida.

Q. 6. And for what length of time did you reside at Citra, Florida? A. About 24 years.

Q. 7. What business, if any at all, were you engaged in at Citra, Florida? A. Raising oranges.

Q. 8. Were your duties solely in connection with the raising of oranges?

A. Many of my vacations were spent in making orange sizers.

Q. 9. You state many of your vacations were spent in making orange sizers, and I will ask you for what purpose were said sizers made, and what disposition was made of the said sizers.

A. They were made for the grading and sizing of the fruit.

Q. 10. Were the sizers so made used solely by yourself?

(Deposition of Howard B. Stevens.)

A. No, sold a great many through the State.

Q. 11. Can you give at this time the names of any of the parties to whom said sizers were sold, and during what years the same were so sold?

A. In 1880 I sold to the Bishop and Hoyt Company, J. A. Harris, Adam Eichelberger, and F. G. Sampson, B. P. Bishop, Clifford Orange Company. I sold every year up to 1894, but do not remember the parties.

Q. 12. Were the parties numerated by you in your last answer located at Citra, Florida, and if not, please state [42] where they were located?

A. All but Eichelberger, Sampson, and B. P. Bishop were located in Citra; Eichelberger in Ocala, F. G. Sampson, Boardman, B. P. Bishop, San Mateo, Florida.

Q. 13. Are the places that you have enumerated located or situated nearby or adjacent to Citra?

A. Ocala and Boardman are in the same county, San Mateo in Putnam County.

Q. 14. Please state what prominence, if any at all, Citra occupied in connection with the fruit industry of the State of Florida.

A. Prior to the freeze of '94 it was considered the largest fruit shipping point in the State.

Q. 15. Am I correct from your previous answer that in my understanding that prior to the year 1894, Marion County, in which Citra is situated, constituted the banner county of this State—relative to the fruit industry?

A. I so considered it.

(Deposition of Howard B. Stevens.)

Q. 16. What has been the position of Citra as identified with the fruit industry of Florida since the year 1894 or 1895?

A. By the freeze it lost a great deal of its prestige.

Q. 17. Well, since 1894, the fruit industry of Citra or of Marion County has been comparatively small? A. I don't know.

Q. 18. In answer to one of the previous questions, you stated that during your vacations between the years 1880 and 1894 you occupied your time in the building of sizers or machines for the sizing of oranges, and I will ask you to explain the construction of said machines. [43]

A. It was composed of two parallel troughs having one adjustable side on each trough. This adjustment adapted to each separate size of fruit so that the size could be changed or varied as needed.

Counsel for the complainant moves to strike the foregoing answer upon the grounds that the same does not relate to the issues in this case, and that the same is immaterial.

Q. 18. Mr. Stevens, I hand you a printed copy of United States letters patent number 247,428 granted H. B. Stevens, of Citra, Florida, under date of September 20th, 1881, for an "Apparatus for Sizing Oranges and Other Fruits." I will ask you to examine the same and state whether or not you are the patentee of the invention covered by said letters patent. A. I am.

Q. 19. Please state whether or not the said letters

(Deposition of Howard B. Stevens.)

patent and the drawings thereof represent the machine or orange sizer which you manufactured and sold at Citra during the period of time previously referred to in your testimony.

A. It does.

Q. 20. With the said letters patent before you, and referring more particularly to figures 1, 2, and 5 of the drawing contained in said letters patent, I will ask that you explain to the Court the manner in which you varied the discharge outlets of the fruit run-way to adjust the same to varying sizes of oranges to be sized by said machine.

A. Each unit for the separate sizes was opened or closed by means of adjusting bolts.

Q. 21. The adjusting bolts which you referred to constitute the members which appear in dotted lines on Fig. 5 of the drawings and which I have marked by the reference numeral A-5. Is that correct? A. That's correct. [44]

Q. 22. What recognition, if any, was given to your fruit sizer as disclosed by said letters patent number 247,428 by the packing-houses in this community?

A. Up to the time of the freeze there was but one packing-house that I knew of that used any other sizer.

Q. 23. Then, if I understand from your previous answer, your sizer dominated in this market?

A. It dominated in the State for a number of years.

Q. 24. Can you state approximately the output of oranges from Citra and Marion County, and by out-

(Deposition of Howard B. Stevens.)

put I mean the yearly output, between the years 1880 and 1894, or up to the time of the freeze which you have referred to?

A. I don't know if I can state for Marion County, but this locality of Citra, approximately, 300,000 crates per year.

Q. 25. And what proportion of these oranges were sized for the market by means of your device, the same being the sizer shown and described in your letters patent 247,428?

A. I say about ninety-eight per cent.

Q. 26. To what, Mr. Stevens, do you attribute the recognition given to your sizer during the years which you have testified?

Objected to by counsel for the complainant upon the ground that the same calls for the conclusion and opinion of witness, and further that it is irrelevant and immaterial. Question withdrawn from the witness.

Q. 27. Please explain what advantage, if any, was possessed by your sizer over such sizers as had been in the market in this section previous to the advent of your machine.

Objected to by counsel for the complainant upon the ground that the same calls for the conclusion and opinion of witness, and further that it is irrelevant and immaterial, and upon the further ground that witness is not qualified as an expert.
[45]

A. There were no sizers on the market previous to my machine. The only thing used for sizing fruit

(Deposition of Howard B. Stevens.)

was to pass the fruit through holes which could not be adjusted.

Q. 28. That is the sizers in use prior to the advent of your sizer were such as had nonadjustible outlets for the fruit, that is to say, the fruit dropped through or passed through an opening of appropriate size when reached? A. Yes.

Q. 29. What advantage to a sizer for oranges flowed by the introduction into a machine of independent and individual adjustment for each discharge outlet of the fruit run-ways of the sizer?

A. It made possible the varying of the pack and an economy in space of the bins.

Q. I offer in evidence printed copies of United States letters patent numbers 247,428 and ask that the same be marked by the notary Defendant's Exhibit Stevens' Patent 1881.

Said exhibit under stipulations to be withdrawn and substituted by a certified copy of said letters patent.

Q. 30. Are you acquainted with one M. A. Rice of Citra? A. Yes, sir; I am.

Q. 31. You will please state what length of time you have known Mr. Rice.

A. I have known him for a good many years. I couldn't say exactly how many.

Q. 32. Can you state whether you knew him prior to your removal from Citra to De Land?

A. Yes.

Q. 33. Did you ever have any business dealing with Mr. Rice with reference to the fruit sizer? [46]

A. Not that I remember.

(Deposition of Howard B. Stevens.)

Q. 34. Was Mr. Rice engaged in the orange industry of Citra? A. Not before I left Citra.

Q. 35. That is you have no recollection at this time of having had business dealings with Mr. Rice?

A. No.

Q. 36. Are you acquainted with one Edgar L. Wartmann of Citra, Florida, and if so, for what length of time have you been acquainted with him?

A. I have known him for about 40 years.

Q. 37. Mr. Wartmann engaged in the fruit industry of Citra?

A. He was in my employ for many years and Bishop Hoyt & Company grove.

Q. 38. Can you state whether or not Mr. Wartmann had any knowledge of the use of your sizer for oranges in this community during the years you have just testified to?

Counsel for complainant objects to the question upon the grounds that the same calls for the conclusion and opinion of witness.

A. He help set them up and help operate them.

Q. 39. Are you acquainted with one W. J. Crosby of Citra, Fla.? If so, what length of time have you known Mr. Crosby?

A. Well, a number of years, exactly how many I don't know. He used to be in my employ in the packing-house.

Q. 40. Was he in your employ in the packing-house prior to the year 1894? A. He was.

Q. 41. Did you sell your machine direct to the users thereof or was the same sold through agents?

A. At first to the direct users, later through E.

(Deposition of Howard B. Stevens.)

Bean of Jacksonville. [47]

Q. 42. Then as I understand it E. Bean of Jacksonville constituted your agent for the distribution of these machines. Can you state approximately the year in which you turned the agency over to E. Bean of Jacksonville? A. I think it was 1882.

Q. 43. Did your machine prove an efficient and practical apparatus for the sizing of fruit?

Counsel for complainant objects to the foregoing question upon the ground that it calls for the conclusion of witness.

Question is withdrawn.

Q. 44. What have you to say Mr. Stevens regarding the practicability and efficiency of your machine relative to the sizing of oranges?

Objected to upon the ground that the question calls for the conclusion of witness.

A. It sized accurately and perfectly.

Q. 45. Were your machines sold in large numbers to users of packing-house machinery prior to the year 1894? A. Yes; they were largely in use.

Q. 46. Can you state, Mr. Stevens, whether your machines were largely used in counties in the State of Florida, other than the county of Marion?

A. They were used in a number of other counties.

Q. 47. Please state, Mr. Stevens, whether your machine had a fruit run-way therein composed of two parallel members, one of said members being rigid, and the opposing member consisting of a series of end to end units each of said units being adjustable, toward and from the opposing fixed member of the fruit run-way.

(Deposition of Howard B. Stevens.)

Complainant's counsel objects to question upon the [48] ground that question is immaterial.

A. My machine was so constructed.

Q. 48. When you say your machine was so constructed, do you mean that all the machines manufactured and sold by you, as testified to, were so constructed? A. Yes, so constructed.

Q. 49. Can you state, Mr. Stevens, whether there is in existence at this time in any of the packing-houses located in Citra, or in Marion County, any of the machines which were sold by you or your agent prior to the year 1894?

A. I understand that M. A. Rice has some of those machines.

Q. 50. Mr. Stevens, I will hand you a series of photographic prints, four in number, and ask you to examine the same and state if you can what machine is disclosed thereby.

A. I should say that these are photographs of machines made by me.

Q. 51. That is machines of your patent?

A. Yes, and made under my direction.

Counsel for the defendant offers the photographs just identified by the witness, and ask that they be marked Photo Prints 1, 2, 3 and 4 for identification.

Q. 52. I notice in your letters patent you describe the fruit to be sized as being delivered to the fruit run-way by hand. Did any reason exist at the time of your invention why the fruit could not be delivered, and was not delivered, to the fruit run-way of the sizer by any suitable and well known form of conveyor or feed mechanism?

(Deposition of Howard B. Stevens.)

Counsel for complainant objects to question [49] upon ground that same is immaterial and not covered by the issues.

A. It was deemed necessary to very closely inspect and grade the fruit, and this sizer would size the fruit as fast as it could be graded and fed to the machine by hand. It could have sized faster had we known how to grade faster.

Q. 53. As I understand you, the grading was performed by hand? A. Yes, sir.

Q. 54. And due to this fact, the fruit was not fed to the sizer faster than the workmen could grade the fruit by hand?

Complainant's counsel objects to question upon ground that same is immaterial and not covered by the issues.

A. Yes.

Q. 55. If I understand you correctly, the grading of oranges and the sizing of oranges constitute different operations?

Complainant's counsel objects to question upon the ground that same is immaterial and not covered by the issues.

A. Yes.

Q. 56. What I wish to ask Mr. Stevens is this, whether the machine constructed under your patent is adapted solely for the work of sizing fruit, or does the machine size and grade. A. Solely for sizing.

Q. 57. I understood you in the forepart of your testimony to state that you had made some of these sizers since the year 1894. Am I correct in that understanding? A. Yes, and since 1900. [50]

(Deposition of Howard B. Stevens.)

Q. 58. Have you continued the manufacture or use of the machine since the year 1900?

A. I built for my own use only since 1900.

Q. 59. Up to what time?

A. Up to spring of 1914.

Q. 60. Where used? A. At DeLand, Florida.

Q. 61. But merely for your personal use as I understand? A. Yes.

Cross-examination waived.

HOWARD B. STEVENS. (Seal) [51]

Parties met pursuant to adjournment.

Deposition of E. L. Wartmann, for Defendant.

Mr. E. L. WARTMANN, a witness produced on behalf of the defendant, being first duly sworn, deposes and says as follows:

Q. 62. Please state your name, age, residence, and occupation.

A. Ed L. Wartmann; age, 58; Citra, Florida; orange grower and farmer.

Q. 63. How long have you resided in Citra, Fla.?

A. 40 years, last November.

Q. 64. From what time dates your identity with the orange-growing industry of the State?

A. Beginning November 1876 up to the present time.

Q. 65. Have you at any time been engaged in connection with any of the packing-houses for the packing and shipment of oranges of this place?

A. I think in the spring of 1878 I was employed by Howard B. Stevens then superintendent for Bishop

(Deposition of E. L. Wartmann.)

Hoyt & Co., and was in their employ for four years or more.

Q. 66. What was Mr. Stevens' position in said packing-house?

A. He was superintendent of the Bishop Hoyt property which I referred to.

Q. 67. Did your identity with the fruit industry of Citra cease with the termination of your employment with the Bishop Hoyt Company? A. No, sir.

Q. 68. After leaving the employ of said company, please explain what connection you had thereafter with the citrus industry of the State, and more particularly with the industry as carried on at Citra. [52]

A. Since leaving the employ of Bishop Hoyt Company I have been a grower and shipper of citrus fruit up to the present moment.

Q. 69. As a shipper of oranges, did you pack the fruit for shipment yourself?

A. No, I had packers to do the work.

Q. 70. What I mean, Mr. Wartmann, if you had a packing-house for the packing of your fruit?

A. Yes, sir.

Q. 71. And where was the packing-house located?

A. Prior to the freeze of 1895 my packing-house was east of Citra about 2 miles.

Q. 72. Was the freeze which you have referred to in 1895 or in 1894?

A. The first cold came on December 27th, the morning of the 28th, 1894, which defoliated our trees, and another cold occurred in February following, which was 1895, destroyed them.

(Deposition of E. L. Wartmann.)

Q. 73. Prior to the freeze which you have just referred to, that is the freeze of 1894 or 1895, what position did Citra occupy relative to the fruit industry of the State of Florida?

A. We were known as the largest shipping point of citrus fruits in the world.

Q. 74. Can you state approximately, Mr. Wartmann, the yearly output of oranges which were packed and shipped at Citra, Florida, prior to the year 1894?

A. The crop of 1893 and 94 was given by the agents of the transportation lines 563,000 boxes, estimated about 1400 carloads. [53]

Q. 75. And how about the years prior to 1893 relative to the annual output?

A. Prior to 1893 I can't give you the number of boxes, but we considered them about fully as one-tenth of the fruit shipped in from the state.

Q. 76. What machinery, if any at all, was employed by you and the packing-houses generally in this section of Florida between the years 1881 and 1894 for the sizing of the oranges for shipment?

A. The sizer universally used by large growers in this section was the Stevens sizer.

Q. 77. Did you yourself operate any of the Stevens sizers? A. I have.

Q. 78. And prior to the year 1894?

A. I used Stevens sizer prior to 94.

Q. 79. And was said sizer used in your packing-house? A. It was.

Q. 80. You say that the Stevens sizer was generally used throughout this section, and more particularly

(Deposition of E. L. Wartmann.)

used by the large packers of fruit prior to the year 1894? Can you instance any of the packing-houses other than your own which employed the Stevens sizer for the sizing of the fruit?

A. My recollection is that fully ninety-five per cent of the fruit shipped from here was sized with the Stevens sizer. I think that the Crescent Orange Grove Company, Mr. John O. Matthews, Church Sangster and Chipman, William R. Hillyer, The James A. Harris Packing-house, Bishop Hoyt & Company, used six of them. Had six in operation in 93. I mean that the Bishop Hoyt people had six.

Q. 81. Are you the owner of a packing-house and are packing and shipping oranges?

A. I do. [54]

Q. 82. Other than your own packing-houses, can you state any packing-house wherein the Stevens sizer is located at this time?

A. I do not know of any machines that are in operation, but I understand that Mr. Rice has some in operation. I have charge of property at Orange Bend in Lake County, belonging to some New York people that have two of the Stevens sizers in it at the present time.

Q. 82. Mr. Wartmann, I will ask you to examine letters patent No. 247,428, which has been introduced in evidence in this case, the same being letters patent granted to H. B. Stevens under date of September 20th, 1881. Ask you to examine the same, and state how the Stevens sizer concerning which you have testified to, compares with said device of the Stevens patent.

(Deposition of E. L. Wartmann.)

A. This is the Stevens sizer such as I have used, and unpacked, set up, and frequently adjusted.

Q. 83. You state that the same represents the Stevens machine which you referred to in your testimony, and which you had set up and adjusted. What did you mean by the expression adjusted as used in your last answer?

A. These machines were made, I understand, in Dayton, Ohio, and were shipped here knocked down, and crated. I mean by setting them up, putting the parts together with bolts and screws, and usually adjusting them with a gauge by means of thumb screws in order that fruit going down the run-way would drop in its proper place. I worked with Mr. Stevens and would unpack these machines when sold to other people during the time that I was with him.

Q. 84. And during what times were you with Mr. Stevens?

A. I was with Mr. Stevens in 1882. [55]

Q. 85. Do you know of your own knowledge whether Mr. Stevens sold these machines for use in Citra, Florida? A. I do.

Q. 86. And prior to this year 1894?

A. Yes, sir.

Q. 87. What has been the extent of the orange industry at Citra, Florida, since the freeze of 1894 and 95 relative to the industry as it existed prior to that time?

A. The freeze of 1895 destroyed (about) all the groves in this territory, and we never have recovered to the extent of rebuilding over 20 per cent of the original property prior to 1895, and I do not think

(Deposition of E. L. Wartmann.)

that there has been a year since the freeze that we have shipped ten per cent of the crop of '93 and '94.

Q. 88. You made mention of a number of packing-houses which were in existence prior to the year 1894, and stated that the Stevens sizer was used throughout those packing-houses. Have those packing-houses continued in business since the year 1895?

A. Some of them.

Q. 89. Will you state which ones were continued?

A. The Crescent Fruit Company, the J. O. Matthews house is now the Seminole, the Church Sangster & Chipman is the Citra Fruit Company. Both the Bishop Hoyt and J. A. Harris packing-houses are not in existence.

Q. 90. Mr. Wartmann, I will hand you a series of photographic prints, which have been marked for identification, and will ask that you will examine the same and state how they compare with the Stevens machine which you have in your possession at one of your packing-houses. [56]

A. These are certainly what I have always known as the Stevens sizer.

Q. 91. Do I understand you to identify these as correct photographic prints of the Stevens sizer which you have in your possession?

A. I identify those.

Counsel for the defendant now offers in evidence the said photographic prints and asks that the same be marked by the notary "Defendant's Photographic Prints Stevens Machine."

Counsel for defendant now offers to accompany counsel for complainant to the packing-house

(Deposition of E. L. Wartmann.)

wherein said machine is located in order that he may personally examine said machine if he so desired.

Counsel for complainant states that he does not care to examine the machine referred to.

Q. 92. Mr. Wartmann, will you describe the construction of the fruit runway of the Stevens machine which you have testified to as having been sold in this community by Mr. Stevens and used by yourself and others prior to the year 1890?

A. The first machine Mr. Stevens built consisted of two parallel runways beginning with an opening at the top that would take a small sized orange, gradually opening it at the lower end to take the large size. The first machine, that consisted of two parallel pieces as a runway built to get an idea of the machine. He afterwards put in the adjustable parts, and that's the machine that he had patented. [57]

Counsel for the complainant moves to strike that part of the witness' answer relating to what he designated as first machine upon the ground that the same is not responsive to question, does not come within the issues of this case, and is immaterial.

Q. 93. Am I correct in my understanding of your testimony as embraced in your last answer that this so-called first machine had a runway formed by two members arranged divergently and was made by Mr. Stevens as a model from which to work out his subsequent idea?

Objected to by counsel for complainant upon the ground that the same seeks to go outside the issues in this case, and is immaterial.

(Deposition of E. L. Wartmann.)

Counsel for defendant would state that counsel for complainant labors under a misapprehension as to the purport of the question. The question is placed to the witness for the purpose of clarifying the records in order that there may be no confusion in the Court's mind as to the intent of the witness. The witness testified as to a so-called first machine, and in his answer qualified the expression by the statement that it was made for the purpose to get an idea of the machine subsequently placed on the market by Mr. Stevens.

A. The first machine referred to in my answer consisted of two pieces of 2x4 tacked together with legs to get an idea of a sizing machine.

Q. 24. Did Mr. Stevens ever place on the market a sizer like that which you have described as his first machine? A. No, sir. [58]

Q. 95. Eliminating from consideration this so-called first machine, I will ask you to describe the construction and operation of the fruit run-way of the Stevens sizer, which you have testified to as having been sold in this community by Mr. Stevens, and used by yourself, Mr. Stevens, and others, prior to the year 1890?

A. The machine as sold by Mr. Stevens and used by growers consisting of two run-ways or grooves beginning at the highest point to accept the smallest fruit, running on down to take the largest sizes. It is probably ten feet long with adjustable plates or jaws with thumb-screws to adjust the machine to take the proper size of the fruit, from the small size of 252 to a size 126, with the opening bottom taking

(Deposition of E. L. Wartmann.)

all sizes larger.

Q. 96. That was the sizer provided with two fruit run-ways, or what is commonly termed in this art a double sizer. Is that correct?

A. That is a double sizer.

Q. 97. Well, as I understand from your testimony each run-way of the sizer was composed of two parallel members? A. Yes.

Q. 98. Was one of the members adjustable toward and from the opposing member? A. They were.

Q. 99. Can you state whether or not the adjustable members consisted of a series of end to end members? Each of said members being adjustable toward and from the fixed member of the run-way.

A. Each size was adjustable toward and from the opposing member.

Counsel for the defendant asks that the question be re-read to the witness for the purpose of ascertaining whether he can give a better answer thereto.
[59]

A. These sections were adjustable, are adjustable, by two thumb-screws. I mean by section pieces practically 14 inches long for each sized orange.

Q. 100. How many of those adjustable sections or units were embodied in the Stevens machine as placed on the market by him in this community?

A. Six sections.

Q. 101. And those six sections provided for six sizing units for the fruit run-way, the overflow from the run-way at the discharge end thereof constituting the 7th size of the fruit? A. Yes.

Q. 102. Now, if I understand you correctly, the

(Deposition of E. L. Wartmann.)

Stevens sizer provided for six sizes of the fruit being sized and the overflow made the seventh.

A. That's right.

Q. 103. What advantage, if any, flowed from the use of adjustable units or sizing sections for the run-ways in the Stevens sizer?

Counsel for the complainant objects to question as calling for conclusion of the witness, and not coming within the issues.

Q. It enabled us to size the fruit correctly so as to pack out properly.

Q. 104. Can you state whether or not the adjustable sections or units of the Stevens machine were independently and individually adjustable relative to each other with respect to the opposing members of the fruit run-ways?

A. They were independent of each other, one section was adjusted independently of the other. [60]

Q. 105. If I understand from your last answer, one section of the fruit run-way could be moved toward and from the opposing walls of the run-way to increase or decrease the carrier of the discharge opening of the run-way controlled thereby without affecting the position of any other section or unit of the fruit run-way?

A. That is correct. You could. To illustrate, if your size of 176 was running a little slack in pack you could adjust this section, opening it up by the thumb-screw making the run-way a little larger, and not affect the other section.

Q. 106. Now, from your use of the Stevens sizer, and from the practical operation thereof in connec-

(Deposition of E. L. Wartmann.)

tion with the work of sizing oranges, did you find this adjustability, that is, the individual and independent adjustability for the discharge apertures or openings of the run-way to be advantageous for a proper sizing of oranges?

Question objected to by counsel for complainant upon the ground that the question does not come within the issues raised by this case.

A. We considered it advantageous.

Q. 107. And you found it useful and a necessity, did you not?

A. We found it useful and very convenient.

Q. 108. Are you acquainted with one W. J. Crosby, of Citra, Florida, and, if so, for what length of time have you known him, and in what business is he engaged?

A. I know Mr. W. J. Crosby. Been acquainted with him about 25 years. He is an orange grower. Has been an orange grower during the period that I knew him.

Q. 109. When you say an orange grower, do you mean a packer and shipper?

A. Packer and shipper and grove owner. [61]

Q. 110. Can you state whether Mr. Crosby ever used in any of his packing-houses the Stevens sizer?

A. Yes, I know that he has used the sizer.

Q. 111. Can you say whether his use thereof was prior to the year 1900?

A. My recollection, I first became acquainted with Mr. Crosby, he was working with the Bishop packing-house either as a grader or packer where these

(Deposition of E. L. Wartmann.)

sizers were used, and that prior to 1895. I don't recollect just what year.

Direct examination closed. Cross-examination waived by counsel for the complainant.

EDGAR L. WARTMANN. (Seal) [62]

In order to save time and needless expense to both parties, it is hereby stipulated between counsel and admitted by attorney for complainant that if W. J. Crosby, M. A. Rice, R. C. Douglas, J. C. Greiner, A. S. Kells, H. M. Eichelberger, A. S. Lambert, and J. W. Hagins were called to the stand for testimony in the present case and testified on behalf of the defendant, the said parties and each of them would testify that Howard B. Stevens, one of the witnesses on behalf of the defendant, had manufactured and sold in Citra, County of Marion, State of Florida, orange sizing machines made in accordance with letters patent 247,428 of September 20, 1881, Defendant's Exhibit Stevens Patent, and in conformity to the sizer disclosed by the photographic prints introduced in evidence on behalf of the defendant to the above action, and would have testified that the said machines had been used by them in their respective packing-houses and in other packing-houses in the County of Marion, State of Florida, and that said machines were manufactured and sold, and placed into use by the said Howard B. Stevens prior to the year 1894, and were used at Citra, and other places in Marion County, State of Florida, prior to said

time, and subsequent thereto and prior to the year 1900.

Citra, Fla., March 21, 1916.

FREDERICK S. LYON, (Seal)

By L. N. BALDWIN, (Seal)

Solicitor for Complainant.

N. A. ACKER, (Seal)

Solicitor for Defendant. [63]

**Certificate of Notary to Depositions Taken at Citra,
Florida, March 21, 1916.**

State of Florida,
County of Marion.

I, K. Wartmann, Notary Public, in and for the County of Marion, State of Florida, do hereby certify that the foregoing depositions of Howard B. Stevens and Ed L. Wartmann were taken on behalf of the defendant in the above-entitled cause in pursuance to notice which is hereto attached, before me at my office in Citra, Florida, on the 21st day of March, 1916.

I further certify that on said days I was attended by N. A. Acker, Esq., representing the defendant and L. W. Baldwin, Esq., representing the plaintiff, and by the above-named witnesses, who were of sound mind and lawful age, and by me first carefully examined and cautioned and sworn before the commencement of their testimony, to testify the truth, the whole truth, and nothing but the truth; and the depositions were taken on the typewriter by Miss L. L. Brumby, for me in my presence and in the presence of the witnesses, and after carefully reading the same they were subscribed to by them

before me. I further *certy* that the reason for taking said depositions was and is the fact that the deponents live more than one hundred miles from the place where the said suit is appointed by law to be tried. That said testimony was begun on the 21st day of March, 1916, and finished on the 21st day of March, 1916. [64]

And I do further certify that I am not attorney nor of counsel for either of the parties in the said deposition and caption named, nor related to either by blood or marriage, nor in any way interested in the event of the cause.

In Testimony Whereof I have hereunto set my hand and seal this 21st day of March, 1916.

[Seal]

R. K. WARTMANN, (Seal)

Notary Public.

My commission does not expire until July 9th, 1917. [65]

[THOSE PORTIONS OF THIS DEPOSITION WHICH ARE DUPLICATED IN DEFENDANT'S EXHIBIT NO. 3 ARE OMITTED HEREFROM.]

[Endorsed]: Def. Exhibit Stevens Patent of Sep. 20/81. R. K. Wartman, Notary Public. [66]



[Endorsed]: Defts. Ex. Photographic Prints
Stevens Machine, R. K. Wartmann, Notary Public.
(Seal) End view of sizer and bins.

[Endorsed]: Defts. Ex. Photographic Prints
Stevens Machine, R. K. Wartmann, Notary Public.
(Seal) This shows thumb nuts under top part of
frame that holds the individual sizing units. One
orange box is under one of the sizer units.

[Endorsed]: Defts. Ex. Photographic Prints
Stevens Machine, R. K. Wartmann, Notary Public.
(Seal) View of sizer with six individual sizing
units.

[Endorsed]: Defts. Ex. Photographic Prints
Stevens Machine, R. K. Wartmann, Notary Public.
(Seal) This shows one of the individual units
pushed in to make grade smaller.

**Letter, Citra, Florida, March 22, 1916, R. K.
Wartman to William M. Van Dyke.**

Citra, Florida, March 22d, 1916.

Hon. William M. Van Dyke,
Clerk, U. S. District Court,
Los Angeles, Cal.

Dear Sir:

I did not have suitable fasteners with which to attach the covers to enclosed documents, and will ask if you will not kindly see that they are properly fastened, and oblige.

Yours truly,

R. K. WARTMAN,

Notary Public. [68]

Testimony. Equity-Suit A-44, A-45, A-50. N. D., N. A. Acker, Defendant's Atty. From R. K. Wartman, Notary Public, Citra, Florida. Val. \$50.00. Hon. William M. Van Dyke, Clerk U. S. District Court, Los Angeles, California. Express Charges Paid. U-9. Southern Express Company, Incorporated, from Citra, Fla. No. ——. Tally No. ——. Route No. ——. Express Charges on this shipment are PREPAID. If express charges appear as collect on delivery sheet, deliver free, entering all numbers shown hereon and on the waybill-label, opposite the entry on delivery sheet. Value \$——. Weight ——. Express Charges Prepaid. \$——, —, on — pieces. Filed Mar. 28, 1916. Wm. M. Van Dyke, Cl. By R. S. Zimmerman, Deputy Clerk. [69]

*In the United States District Court, Southern
District of California, Northern Division.*

EQUITY SUIT—No. A-45.

FRED STEBLER,

Plaintiff,

vs.

MID-CALIFORNIA CITRUS ASSOCIATION,
Defendant.

Notice of Taking Testimony.

To Fred Stebler and Frederick S. Lyon, Esq., His
Solicitor, Merchants Trust Building, Los An-
geles, California:

Gentlemen:

Please take notice that the defendant herein will take the testimony of H. A. Beekhuis and J. E. Hansford, who reside respectively at 411 E. 10th Street and 402 E. 9th Street, in the City of Hanford, County of Kings, State of California, and of A. Nieson, who resides at Armona, in the county of Kings, State of California, and probably others, for use on behalf of defendant at the trial of the above-entitled cause, before Ed. T. Smith, a notary public, in and for the County of Kings, State of California (or some other official authorized by law to take depositions), and not of counsel or attorney to either of the parties, nor interested in the event of this cause, at the office of said [70] Ed. T. Smith, in the Hills Building, West Eighth Street, Hanford, California, on Thursday, the 6th day of July, 1916, commencing at 10:30 o'clock in the forenoon; all of said witnesses residing more than one hundred miles from the place of

trial herein and more than one hundred miles from any place at which a district Court of the United States for the Southern District of California, is appointed to be held by law.

Such testimony will be given in accordance with the provisions of Sections 863, 864, 865 of the Revised Statutes of the United States. Adjournment will be taken from day to day and at such time and place as may be necessary for the taking of the depositions without further notice.

You are invited to attend and cross-examine.

Very respectfully,

N. A. ACKER,

Solicitor and of Counsel for Defendant.

San Francisco, California, June 27, 1916.

[Endorsed]: No. A-45. U. S. District Court, Southern District of California. Fred Stebler, Plaintiff, vs. Mid-California Citrus Association, Defendant. Notice of Taking Testimony. Service of the within notice admitted this 1st day of July, A. D. 1916. Frederick S. Lyon, Solr. for Plaintiff. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for ———. [71]

*In the United States District Court, Southern
District of California, Northern Division.*

EQUITY SUIT No. A-44.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

Notice of Taking Testimony.

To Fred Stebler, and Frederick S. Lyon, Esq., His
Solicitor, Merchants Trust Building, Los An-
geles, California.

Gentlemen :

Please take notice that the defendant therein will take the testimony of H. A. Beekhuis and J. E. Hansford, who reside respectively at 411 E. 10th Street and 402 E. 9th Street, in the city of Hanford, county of Kings, State of California, and of A. Nieson, who resides at Armona, in the county of Kings, State of California, and probably others, for use on behalf of defendant at the trial of the above-entitled cause, before Ed. T. Smith, a Notary Public, in and for the county of Kings, State of California (or some other official authorized by law to take depositions), and not of counsel or attorney [72] to either of the parties, nor interested in the event of this cause, at the office of said Ed. T. Smith, in the Hills Building, West Eighth Street, Hanford, California, on Thursday, the 6th day of July, 1916, commencing at 10:30 o'clock in the forenoon; all of said witnesses residing more than one hundred miles from the place of trial herein and more than 100 miles from any place at which a District Court of the United States for the Southern District of California, is appointed to be held by law.

Such testimony will be given in accordance with the provisions of Sections 863, 864, 865 of the Revised Statutes of the United States. Adjournment will be taken from day to day and at such time and place as may be necessary for the taking of the depo-

sitions without further notice.

You are invited to attend and cross-examine.

Very respectfully,

N. A. ACKER,

Solicitor and of Counsel for Defendant.

San Francisco, California, June 27, 1916.

[Endorsed]: No. A-44. U. S. District Court, Southern District of California. Fred Stebler, Plaintiff, vs. Porterville Citrus Association, Defendants. Notice of Taking Testimony. Service of the within notice admitted this 1st day of July, A. D. 1916. Frederick S. Lyon, Solicitor for Plaintiff. Nicholas A. Acker, Attorney at Law, Foxcroft Building, 68 Post Street, San Francisco, Cal., for ———.

[73]

*In the United States District Court, Southern
District of California, Northern Division.*

EQUITY SUIT No. A-44.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

Depositions Taken at Hanford, California.

BE IT REMEMBERED that pursuant to the annexed copy of taking of testimony at the office of Ed. T. Smith, the notary public named in the said notice of taking testimony, and adjourned to the Superior Courtroom, in the courthouse, in Hanford, in the county of Kings, State of California, present on behalf of complainant, Frederick S. Lyon, Esq., pre-

sent on behalf of defendant, Nicholas A. Acker, Esq., the following proceedings were had, to wit:

Mr. ACKER.—It is hereby stipulated that the testimony herein may be taken down stenographically by Walter Moore, under the directions of Ed. T. Smith, the notary public named in the notice of taking testimony.

It is further stipulated that the testimony given herein may be read into companion case Number A-45, entitled, “Fred Stebler, Plaintiff, vs. Mid-California Citrus Association, Defendant,” with the same force and effect as though taken as original testimony in the said case.

It is further stipulated that printed uncertified copies of United States letters patent may be introduced in evidence, and used with the same force and effect as though duly certified. [74]

Mr. LYON.—And that the recitals as to the filing dates of the respective applications therefor that may be contained in said printed copies of patents may be received as *prima facie* evidence of such filing dates, all subject to correction by the production of duly certified copies of such patents or applications, if any errors are found in such printed copies.

At this time Walter Moore was sworn to act as stenographic reporter in the taking of said testimony.

Deposition of H. A. Beekhuis, for Defendant.

H. A. BEEKHUIS, a witness produced on behalf of the defendant, being first duly sworn, testified as follows, to wit:

Direct Examination by Mr. ACKER.

Mr. ACKER.—Q. Mr. Beekhuis, will you please

(Deposition of H. A. Beekhuis.)

state your name, age, residence, and occupation?

A. H. A. Beekhuis; age, forty-six; residence, four hundred and eleven East Tenth Street, Hanford, Kings County; manager of North Ontario Packing Company.

Q. What is the business conducted by the said Company? A. Dried fruit.

Q. How long have you been associated with or interested in the fruit industry in this state?

A. Since eighteen hundred and ninety four; that is, twenty-two years.

Q. What connection, if any at all, have you had relative to machinery for the sizing or grading of fruit?

A. Well, I have had experience along those lines right from the beginning in the fruit business; in connection with the dried fruit industry I have had experience with fruit graders; fruit graders are used in practically all branches of the fruit industry that I was connected with; at one time I myself invented a fruit grader.

Q. You say at one time you invented a fruit grader; did you receive [75] a patent or make application for patent for the said fruit grader?

A. Yes, sir; I applied for a patent in February, nineteen hundred and eight for a fruit grader; that patent was issued, I believe, some six months later.

Q. Have you a copy of the letters patent?

A. Yes, sir.

Q. You have just handed me printed copy of United States letters patent number nine hundred

(Deposition of H. A. Beekhuis.)

and six thousand, six hundred and five, granted to H. A. Beekhuis, December fifteenth, nineteen hundred and eight; fruit grader; I understand you are the H. A. Beekhuis, the patentee of the said device.

A. Yes, sir.

Q. What disposition, if any at all, did you make of the invention set forth in the said letters patent, Mr. Beekhuis?

A. I assigned the interest to the California Fruit Cannery Association.

Q. Please state whether or not an apparatus was ever manufactured or constructed under that letters patent which you have just handed me.

Mr. LYON.—That's objected to as leading and incompetent; calling for the conclusion and expression of opinion of the witness; not the best evidence; incompetent; no foundation laid for the introduction of secondary evidence.

Mr. ACKER.—Question is withdrawn.

Q. From what were the drawings made which are attached to and made a part of the letters patent?

A. The drawings were made from a model and the model in turn was made from the machine that was in operation at the local cannery of the California Cannery Association.

Q. Was that machine in operation in one of the houses here?

A. Yes, the previous season—canning season, the machine was in operation; then after the season closed I had a model made of the [76] machine and took that model to the attorney, Mr. Booth, and

(Deposition of H. A. Beekhuis.)

Mr. Booth had the drawings made from that model.

Mr. ACKER.—I will introduce or offer in evidence the letters patent referred to by the witness, and ask that the notary public mark it as defendant's exhibit, Beekhuis patent, number nine O six, six O five.

Mr. LYON.—It is objected to as incompetent, irrelevant and immaterial; not a part of the prior art, the said letters patent having been granted and issued subsequently to the filing of the application for the patent in suit by complainant Fred Stebler.

Mr. ACKER.—You stated in one of your previous answers, Mr. Beekhuis, that the apparatus from which the model was made for presentation to your attorney for the filing of the application which eventuated in the grant of the letters patent number nine O six, six O five, was in use in one of the packing-houses; please state when that apparatus was constructed and when the same was installed and placed in operation.

A. The original grader was installed in the early spring of nineteen hundred and six, and it was operated during the season of that year; then during the fall of nineteen hundred and six, or possibly the early spring of nineteen hundred and seven, an improvement was made in the machine, and in that way it was operated during the season of nineteen hundred and seven, and the application for the patent described the machine as it was in operation during that year.

Q. In nineteen hundred and seven.

A. In nineteen hundred and seven.

(Deposition of H. A. Beekhuis.)

Mr. LYON.—We object to the last portion of the answer, including and following the words, “the application for patent,” on the ground the same is not responsive to the question; and as incompetent; not the best evidence; no foundation laid for the introduction [77] of secondary evidence; move to exclude the same from consideration, and strike the same from the record upon that ground.

Mr. ACKER.—Q. When and where was the machine installed in nineteen hundred and seven, and during what portion of the year nineteen hundred and seven?

A. The machine was installed at the local plant of the California Fruit Cannery Association, either during the latter part of nineteen hundred and six, or the early part of nineteen hundred and seven.

Q. What is your best recollection?

A. My best recollection is it was the early part of nineteen hundred and seven; February or March; somewhere around that time.

Q. Is that machine in use at the present time?

A. Yes, sir.

Q. Has it been in continuous use since its installation?

Mr. LYON.—Objected to as leading.

A. Yes, sir.

Mr. ACKER.—I will hand you a photograph and ask you to examine the same, and state whether or not you can identify the said photograph.

A. Yes, sir; that photograph was taken—

Mr. LYON.—Just a moment; object to the witness

(Deposition of H. A. Beekhuis.)

stating what the photograph is; he has answered the question.

Mr. ACKER.—Q. You identify that photograph?

A. Yes, sir.

Q. Please state what that photograph was and what it is a photograph of.

Mr. LYON.—That is objected to as incompetent; not the best evidence; no foundation laid for the introduction of secondary evidence.

A. The photograph was taken of the grader as it stands at the present time in the plant of the California Fruit Canners Association; at Hanford.

Mr. ACKER.—Q. Is that the machine which you referred to in your [78] previous answer as to which a model was made for the purpose of presentation to your attorney for the filing of application for letters patent? A. Yes, sir.

Mr. LYON.—Objected to as leading.

Mr. ACKER.—Q. You are the owner of the machine which is represented by the photograph you now hold in your hand? A. No, sir.

Q. The California Fruit Canners Association I understand to be the owner of that machine?

A. Yes, sir; the owner of the machine.

Q. What is the approximate size and weight of that machine, Mr. Beekhuis?

A. The size is approximately thirty-five feet long; that is, of the main grader; the main grader is about thirty or thirty-five feet long; the belts would increase it about fifteen or sixteen feet; the width is approximately eight feet; the weight I have no idea

(Deposition of H. A. Beekhuis.)

of; what the weight would be.

Q. Please describe the operation of the said machine, Mr. Beekhuis.

Mr. LYON.—That is objected to as incompetent; no foundation laid; not the best evidence.

Mr. ACKER.—As installed in the packing-house which you have referred to and at present in use in the said packing-house.

Mr. LYON.—Of course we object to the amendment of the question.

A. The fruit is put in one end of the machine so that it comes on top of the grading-table; then through a shaking motion imparted to the grading-table it is moved forward over that table, and from the fact that this table is provided with holes increasing in size, the small fruit is shaken out first, and the larger size later on as it travels on over the grading-table; then when it drops down it lands on a system of distributing belts that connect with the canning tables where they are put in the cans; where the fruit is put in the cans; the distributing belts are arranged in [79] such a way that the fruit can be moved either from the grading-tables to either belt, or from one belt to the other.

Mr. ACKER.—Q. Referring to your letters patent number nine O six, six O five, I direct your attention to the part marked by the reference numeral eight, and ask you to state what is the function of the said part.

Mr. LYON.—That is objected to as incompetent, and not the best evidence; said letters patent speak

(Deposition of H. A. Beekhuis.)

for themselves.

A. Number eight is the main carrier connecting with the canning tables.

Mr. ACKER.—Q. Please mark on the photograph which you referred to in your previous answer by the letter “A” the part designated thereby which corresponds to the part marked eight in the said letters patent.

Mr. LYON.—The question is objected to as calling for the conclusion, and as leading; assuming a fact not in the testimony of the witness.

(Witness marks.)

Mr. ACKER.—Q. Please mark on the said photograph by a reference letter “B” a part therein which corresponds or conforms to the part in the drawing of the said letters patent designated by the reference numeral eleven.

Mr. LYON.—Same objection as last noted on the record.

A. They don't show on the photograph; those marks by the cipher eleven are swinging gates; which in the photograph are closed; lets see; there is one partly open; yes, one is partly open.

Mr. ACKER.—Q. Please mark it by the reference letter “B.”

Mr. LYON.—Same objection.

A. (Witness marks.)

Mr. ACKER.—Q. When the fruit left the shaking-table of the said machine as installed by you in the packing-house mentioned, where did the graded or sized fruit go to?

(Deposition of H. A. Beekhuis.)

A. It drops on to a slanting [80] shute.

Q. Does the said shute appear in the photograph, and if so, mark it by the reference letter "C"?

A. (Witness marks.)

Q. And from the shute "C" where did the fruit go?

A. The fruit—from "C" it will drop on the main carrier "A."

Q. And from the main carrier "A" where did the fruit go?

A. From the main carrier "A" it will go through gates marked "B" on to the belts of the canning tables.

Q. Do the belts leading to the tables which you refer to in your last answer appear on the said photograph? A. No, sir.

Q. Do they appear on the said—why is it they do not appear on the photograph?

A. Well, because they are—the structure of the canning table prevents a view of them; I can give you an idea where they are, but they don't show.

Q. What reference numeral designates those belts which you say are hidden by the canning-tables on the drawing of your patent number nine O six, six O five?

Mr. LYON.—That's objected to as leading and suggestive; not the best evidence; calling for the conclusion of the witness; incompetent; no foundation laid for the introduction of secondary evidence.

A. Number twelve.

Mr. ACKER.—Q. In the machine as installed by

(Deposition of H. A. Beekhuis.)

you, and as represented by the photograph which you have referred to, how many grades or sizes of fruit are divided by it? A. Six grades.

Q. How many shutes are provided for in the machine relative to the size or grade apparatus of the grade element?

Mr. LYON.—That is objected to as leading; and suggestive; and assuming a fact that the witness has not testified to.

A. Five shutes; the sixth grade is a grade that goes over the grader that is too large to fall through any of the apertures, [81] and that is provided with a separate shute; different from the other shutes; laying underneath the grading-table.

Mr. ACKER.—Q. Under whose supervision, Mr. Beekhuis, was this photograph that you have presented here made? A. Under my supervision.

Q. And when was the same made?

A. July the fifth, nineteen hundred and sixteen.

Q. When did you last see the machine in operation, Mr. Beekhuis?

A. Nineteen hundred and seven.

Q. I say when did you last see it?

A. That's the last time I saw it in operation; during the season of nineteen hundred and seven.

Q. Was it in operation at the time this photograph was made?

Mr. LYON.—Objected to as leading.

A. It was not in operation because the season was not open yet for the canning of peaches.

Mr. ACKER.—Q. What was your position in the

(Deposition of H. A. Beekhuis.)

canning-house in which this machine was installed?

A. Superintendent.

Q. And for what length of time were you superintendent of the said house?

A. From nineteen hundred and three—April, nineteen hundred and three, until March the first, nineteen hundred and eight.

Q. Did you sever your connection with the house at that time? A. At that time, yes.

Mr. ACKER.—I will introduce the photograph in evidence and ask that the same be marked defendant's exhibit, photograph, Beekhuis machine.

Mr. LYON.—Objected to as incompetent; no foundation laid.

Mr. ACKER.—Q. Please state what success followed the operation of the said machine, Mr. Beekhuis.

A. It was a complete success in regard to the functions that were expected of it; that is, separating the fruit in accordance to its size and distributing [82] it to the various canning-tables.

Q. By whom was the machine built, Mr. Beekhuis, which was installed in the packing-house to which you have referred, and as installed not later than March, nineteen hundred and seven?

A. Does that refer to the improvement that was made during the season of nineteen hundred and six and the early spring of nineteen hundred and seven?

Q. I mean nineteen hundred and seven; by whom was that machine built?

(Deposition of H. A. Beekhuis.)

A. That was built by A. Nieson.

Q. And was Mr. Nieson connected with the packing-house?

A. He was the engineer of the packing-house; of the cannery.

Q. Is he connected with that packing-house at the present time?

A. He is at the present time foreman of the Kings County Packing Company at Armona.

Mr. ACKER.—You may take the witness, Mr. Lyon.

Cross-examination by Mr. LYON.

Mr. LYON.—Q. What kind of fruit was this grader used with while you were connected with that packing-house, Mr. Beekhuis?

A. With peaches; used for peaches.

Q. Had those peaches been dried before being run through this machine? A. No, fresh peaches.

Q. Were they in their natural form or had they been cut? A. They had been cut.

Q. Cut in halves. A. Cut in halves.

Q. Have you had any experience with the separation of oranges in accordance to their size?

A. No, sir.

Q. You don't know then whether a grader such as this one which you have referred to would be a successful operative in separating oranges according to their size, do you? [83]

A. I would imagine it would be; it would operate successfully in dried fruit and on anything, I would imagine, that would require separation according to size.

(Deposition of H. A. Beekhuis.)

Q. Would it have any capacity as a separator of oranges as to size?

A. Well, I would imagine it would have as large a capacity there as anything else that would run over it.

Q. You have no knowledge from any experience as to whether or not that would be a fact or not, have you?

A. No; in my mind I compare it with the capacity that the dried fruit grader would have and built of the same dimensions and that would be the same capacity practically as it would have on fresh fruit.

Q. You say that these belts which were arranged at right angles to the length of the grader, and which you say do not appear in this photograph, led to the packing-tables; please explain to us what you meant by packing-tables.

A. Packing-tables or canning-tables are the tables on which the fruit is canned; they consist of a belt that carries the fruit from the grader along-side of the canning-table; then it is provided with bins in which the fruit drops from the belt; each bin is provided with a swinging gate that each packer can fill the bin with the required amount and then close the gate and let the fruit pass on; the tops of the canning-table are provided with screens to place the trays we can when filled with fruit, and also with racks to carry the empty cans.

Q. None of that apparatus shows in this photograph?

A. Not in detail; the general appearance of the

(Deposition of H. A. Beekhuis.)

canning-table shows in the photograph.

Mr. LYON.—That's all.

Mr. ACKER.—I would like to be permitted to ask a question on [84] direct examination.

Mr. LYON.—Go ahead and ask it.

Mr. ACKER.—Q. Mr. Beekhuis, have you the model of the device which you submitted to your attorney for the letters patent on the device?

A. No, sir.

Mr. ACKER.—If counsel for complainant so desires we will adjourn the taking of further testimony at this point so as to enable him to visit the packing-house and inspect the machine as installed therein and from which the photograph was taken, it being impossible to secure the machine itself and produce it in court.

Mr. LYON.—I will avail myself of the opportunity to inspect the alleged machine, but do not require an adjournment for that purpose at this time, as the witness in the case, if I should desire to further cross-examine, can be readily recalled.

Mr. LYON.—It is stipulated and agreed that the reading over and signing of these depositions by the witnesses is waived, and that the depositions as certified by the notary public and returned to the court, may be read in evidence with the same force and effect as though read over and signed in the presence of counsel and the notary public, and subject to all objections which would otherwise be good as to the depositions if duly signed.

Deposition of J. E. Hansford, for Defendant.

J. E. HANSFORD, produced as a witness on behalf of the defendant, being first duly sworn, testified as follows, to wit:

Direct Examination by Mr. ACKER.

Mr. ACKER.—Q. Mr. Hansford, please state your name, age, residence and occupation.

A. J. E. Hansford; four hundred and two East Ninth Street, Hanford, Kings County, California; laborer.

Q. Where are you employed at the present time, Mr. Hansford? [85] A. Rosenberg Brothers.

Q. And what is the business of the Rosenberg Brothers? A. Dried fruit.

Q. How long have you been identified with that line of business? A. Sixteen years.

Q. Where were you employed prior to taking employment with the company with which you are now employed?

A. California Fruit Cannery Association.

Q. When were you in their employ?

A. Nineteen hundred and six to nineteen hundred and twelve.

Q. Nineteen hundred and six to nineteen hundred and twelve. A. Yes, sir.

Q. Are you acquainted with one Hermanus A. Beekhuis? A. Yes, sir.

Q. How long have you known Mr. Beekhuis?

A. Since nineteen hundred and four.

Q. Have you ever been employed with the same companies with Mr. Beekhuis? A. Yes, sir.

Q. Which company?

(Deposition of J. E. Hansford.)

A. California Fruit Cannery Association.

Q. What machinery is used in the California Fruit Cannery Association's plant during the term of the employment, if any at all, for the grading or sizing of fruit?

A. Well, it is a big grader that Mr. Beekhuis constructed.

Q. Can you state when the machinery was there that Mr. Beekhuis constructed or when it was installed?

A. It was installed in nineteen hundred and six.

Q. What portion of the year nineteen hundred and six?

A. It was ready for the beginning of the season; I suppose we commenced about July.

Q. And what length of time was it in use in the said packing-house of the California Fruit Cannery Association? [86] A. It is in use there yet.

Q. Of your own knowledge?

A. Well, I was in there about two months ago and it was there; I saw the machine there.

Q. Was it in use—can you state whether it was in use in the packing-house of the California Fruit Cannery Association during the years which you were employed there from nineteen hundred and six to nineteen hundred and twelve?

A. Yes, sir; it was continuously used every year.

Q. Please describe the machinery which you have referred to as having been installed during the latter portion of nineteen hundred and six and in use in the said packing-house up to the time you sev-

(Deposition of J. E. Hansford.)

ered your connection with the same.

A. Well, it is a big long frame built on the style of any dried fruit grader, but the styles are different; the screens are different; smaller first and a little larger and larger and so on.

Q. What became of the fruit after it left the screens?

A. It dropped on to a belt, and that belt transfers it to different cross belts out into the canning-room.

Q. I hand you a photograph which has been introduced in evidence in this case, and ask you to examine the same, and state if you can identify the machine portrayed thereby?

A. Yes, sir; this is the machine here; grading part; the fruit comes out on to the belt here and runs off to these different canning-tables here.

Q. You say runs on to the belts here; meaning the belt which has been—

A. There is a long cross-belt along here.

Q. Marked by the reference letter “A”?

A. This belt is “B.”

Q. And what transfers it from the Belt “B” to the canning-tables?

A. From “B” to the canning-tables?

Q. Yes, sir.

A. It first went on to another belt and then [87] off of that belt to a belt running this way; to transfer it from the first belt to the second there was a big tin flap went down; slid it to the second belt.

Q. Then as I understand it there were—it went from the second belt to those transfer belts?

(Deposition of J. E. Hansford.)

A. Yes, sir.

Q. And where did these transfer belts take the fruit?

A. Along in different bins to the ladies that canned the fruit.

Q. Do I understand that that is the machine which Mr. Beekhuis installed for the California Fruit Cannery Association?

A. Yes, sir, this is the machine.

Q. For what packing-house of the California Fruit Cannery Association was the machine represented by the said photograph installed by Mr. Beekhuis?

A. Well, it is the packing-house in Hanford; I think the number is seventeen; I wouldn't be positive.

Q. It is the Hanford packing-house.

A. Hanford packing-house.

Q. Can you tell what success, if any at all, was had with the operation of the said machine?

A. Yes, sir; it was very successful according to our estimation; for grading fruit and labor saving.

Q. Do you know by whom the machine was built or constructed?

A. Well, Mr. Beekhuis was the superintendent of it, but I think Frank Smith first built the machine; him and a fellow named Nieson; I think they both worked on it.

Q. And was Mr. Nieson in the employ of the California Fruit Cannery Association? A. Yes, sir.

Q. What was his position?

(Deposition of J. E. Hansford.)

A. He was engineer I think at that time.

Q. You made mention in one of your previous answers as to a tin flap; does that tin flap appear on the photograph exhibit?

A. Yes, sir; I think this is it. (Showing.)

Q. Will you mark it with the reference letter "D"? [88]

A. (Witness marks.)

Mr. ACKER.—You may take the witness.

Cross-examination by Mr. LYON.

Mr. LYON.—Q. Have there been any changes made in this machine while you were there?

A. Yes, sir, I think there was.

Mr. LYON.—That's all.

Redirect Examination by Mr. ACKER.

Mr. ACKER.—Q. What was the nature of those changes, Mr. Hansford?

A. They added another belt to it in the year nineteen hundred and seven, I think it was.

Mr. ACKER.—That's all.

Deposition of A. Nieson, for Defendant.

A. NIESON, produced as a witness on behalf of the defendant, being first duly sworn, testified as follows, to wit:

Direct Examination by Mr. ACKER.

Mr. ACKER.—Q. Mr. Nieson, will you please state your name, age, residence and occupation?

A. Alvin E. Nieson; age, thirty-five; residence, Armona; occupation, foreman of cannery.

Q. What cannery are you foreman of?

(Deposition of A. Nieson.)

A. Kings County Packing Company at Armona.

Q. How long have you occupied the position of foreman of the said packing-house?

A. Two years.

Q. And where were you employed prior to that?

A. Anderson Baglsey Company, San Jose.

Q. Were you at any time employed by the California Fruit Cannery Association? A. Yes, sir.

Q. During what years?

A. Nineteen hundred and six and nineteen [89] hundred and seven, and a portion of nineteen hundred and eight, I think, but I don't remember the exact time.

Q. What was your position in the packing-house at said time and what was the name of the packing-house?

A. I was engineer; engineer and repairman.

Q. And what packing-house was that?

A. California Fruit Cannery Association.

Q. In the Hanford packing-house?

A. Yes; Hanford plant.

Q. Are you acquainted with H. A. Beekhuis?

A. Yes, sir.

Q. What length of time have you known him?

A. Well, since nineteen hundred and six.

Q. Was Mr. Beekhuis an employee of the California Fruit Cannery Association in the Hanford packing-house at that time? A. Yes, sir.

Q. And what was his position in the Hanford packing-house? A. Manager.

Q. What machinery, if any at all, was employed in the Hanford packing-house of the California

(Deposition of A. Nieson.)

Fruit Cannors Association during the said years for the grading or sizing of fruit, if any?

A. A grader; machinery for the sizing of fruit; grader was all that I remember of.

Q. What machine was that? Please describe it a little more in detail; by whom that machine was built, or whose machine it was.

A. The machine was designed by Mr. Beekhuis; in nineteen hundred and six.

Q. Did you have anything to do with the building of that machine?

A. No; I was there when it was built.

Q. Please state when it was built and whether or not the same was ever placed into use.

A. It was built in nineteen hundred and six; spring of nineteen hundred and six; and was placed in use in [90] nineteen hundred and six.

Q. What length of time was it maintained in use?

A. During the peach season; peach canning season.

Q. Of what year or years?

A. In nineteen hundred and six and seven.

Q. Was it in use during the term of your employment with the California Fruit Cannors Association? A. Yes, sir.

Q. Do you know whether it is in use at the present time or not?

A. Well, it is in the factory; I presume they are using it as far as I know.

Q. I direct your attention to the drawings contained in letters patent exhibit offered in evidence on behalf of defendant number nine hundred and six

(Deposition of A. Nieson.)

thousand, six hundred and five, and ask you to examine the same, and state how the machine represented thereby conforms to the machine which you have testified about.

Mr. LYON.—That's objected to as incompetent; not the best evidence; no foundation laid for the introduction of secondary evidence; leading and suggestive.

A. Now, what do you want me to do?

Mr. ACKER.—Q. I don't want you to do anything; my question is, how does the machine which you have testified to as having been installed for the packing-house conform to the machine represented by those drawings?

Mr. LYON.—Same objection as last noted on the record.

A. Well, the only difference is that this crank shaft the way the machine is is in the center and the shaker is cut in two in the center; it has two belts the same as it shows here; that is, the—at the time that I left the company why the grader had two belts the same as it has now; but the grader has now three belts; one has been added since I left.

Mr. ACKER.—Q. I hand you a photograph which has been introduced [91] in evidence on behalf of the defendant and ask you to examine the same and state whether you can identify the machine represented thereby?

A. Yes, I can identify that as being the machine.

Q. As being what machine?

A. As being the grader that is now installed in the Hanford plant of the C. F. C. A.

(Deposition of A. Nieson.)

Q. That is, the grader that you have referred to in— A. Which I have referred to.

Mr. ACKER.—You may take the witness, Mr. Lyon.

Cross-examination by Mr. LYON.

Mr. LYON.—Q. Your attention, Mr. Nieson, has been directed to Defendant's Exhibit "B," patent number 'nine O six, six O five; I call your attention to the belt or conveyor or carrier twelve of that patent; these were conveyers for carrying the fruit away to the point where it was to be packed?

A. Yes; to the canning-tables; each one of these belts here that lead right this way represent a canning-table.

Q. Now, how many of those belts were there on that machine at the time that you left the said packing-house in nineteen hundred and eight?

A. Well, now, I don't remember exactly, but I think there was eight; to the best of my knowledge.

Q. They simply conveyed the fruit to the other portions of the house where ever the tables were located?

A. Well, now, this large belt here, number eight, it is a distributing belt; it was to force different grades of fruit off of the screens on to the canning-tables; now, if I remember right, there was six different sized screens here and six of these canning-tables; and this belt, number eight belt, took that fruit from each screen to each canning-table; then if there was other fruit than these tables would handle it would turn into number fourteen belt and *taken* down to [92] two extra tables on the end;

(Deposition of A. Nieson.)

we called it a transfer belt.

Q. And the belt sixteen also then carried the fruit off to the other portions of the packing-house.

A. To the other portions of the packing-house.

Mr. LYON.—That's all.

Redirect Examination by Mr. ACKER.

Mr. ACKER.—Q. In one of your previous answers on cross-examination you said the fruit was taken from—distributed by belt eight to the canning-tables, and you referred to the drawing and the part marked twelve; do I understand the parts marked twelve are the canning-tables?

A. Are the canning-tables, yes, sir; these are canning-tables.

Q. Are they canning-tables or belts?

A. Well, the canning-tables have a belt on them, and I presume this represents the belt; the belt on the canning-table, but the canning-table butts right up against the chute here.

Q. I direct your attention to a part marked twelve; on the drawing; what was the purpose of that, if you know?

A. Well, I think that eleven represents the switch; these parts marked eleven are switches.

Q. And what do they do?

A. You can close this switch and let this fruit go down this belt on to the next table if you want to.

Q. And were those switches on the machine as installed by Mr. Beekhuis? A. Yes.

Mr. ACKER.—That's all.

Mr. LYON.—That's all.

At this time counsel, the witness H. A. Beekhuis

(Deposition of H. A. Beekhuis.)

and complainant Fred Stebler made a trip of inspection of the [93] machine installed by said Beekhuis for the California Fruit Cannery Association at its packing-house in Hanford.

**Deposition of H. A. Beekhuis, for Defendant
(Recalled).**

H. A. BEEKHUIS, recalled as a witness on behalf of the defendant, testified as follows, to wit:

Direct Examination by Mr. ACKER.

Mr. ACKER.—Q. Mr. Beekhuis, you have just accompanied counsel to the packing-house where this machine was installed; I will ask you to examine the photograph, defendant's exhibit, Beekhuis machine, and state whether since the examination you have any reason to vary or alter the testimony heretofore given by you. A. No, sir.

Q. I noticed in the examination of the machine that there were certain waters sprayed down on the shaking and grading screens; what was the purpose or the function of that water, and is the water-pipe illustrated in the said photograph exhibit?

A. That water-pipe is illustrated, yes; in the photograph; the function of it is to keep the fruit moist and therefore enable it to slip quicker through the holes than it would in case it became dry.

Q. Since your examination of the machine do you know of any reason why the said machine is not adapted for grading fruit other than sliced peaches?

A. No, sir.

Mr. ACKER.—That's all.

Mr. LYON.—That's all; no cross-examination.
[94]

I, Walter Moore, do hereby certify that I am the Official Phonographic Reporter of the Superior Court of the County of Kings, State of California; that on the 6th day of July, 1916, I was appointed and sworn by Ed. T. Smith, the notary public named in said notice of taking of testimony, to act as phonographic reporter; that I did correctly report in shorthand writing the proceedings had and testimony given in said matter, and transcribed the same into longhand; that the foregoing and annexed pages, numbered from one to twenty-one, both inclusive, contain a full, true and correct statement of the proceedings had and testimony given in said matter, and a full, true and correct transcript of my shorthand notes taken of the proceedings had and testimony given thereat.

Dated, Hanford, California, July 7th, 1916.

WALTER MOORE,

Official Phonographic Reporter of the Superior
Court of the County of Kings, State of California. [95]

State of California,
County of Kings,—ss.

I, Ed. T. Smith, Notary Public in and for the County of Kings, State of California, do hereby certify:

That the depositions of H. A. Beekhuis, A. Nieson and J. E. Hansford, witnesses produced on behalf of the defendant, were taken in the above-entitled cause in pursuance to the notice which is hereto attached,

before me, at my office, in Hanford, County of Kings, State of California, on the 6th day of July, 1916.

I further certify, that on said day I was attended by Frederick S. Lyon, Esq., representing the complainant, and by Nicholas A. Acker, Esq., representing the defendant, and by the above-named witnesses, who were of sound mind, and of lawful age, and by me first carefully examined, cautioned and sworn before the commencement of their testimony to testify to the truth, the whole truth, and nothing but the truth; and the depositions were taken by Walter Moore for me in my presence and in the presence of the witnesses, and the reading and signing of the said depositions were waived by counsel.

I further certify, that the reason for taking the depositions was, and is the fact, that the deponents live more than one hundred miles from the place where the said suit is appointed by law to be tried; and that the said testimony was begun on the 6th day of July, 1916, and finished on the said date.

I do further certify, that I am not attorney, nor of counsel for either of the parties in the said depositions and caption named, nor related to either by blood or marriage, nor in any way interested in the event of the cause.

My commission does not expire until April 29th, 1917.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and [96] affixed my official seal, this 7th day of July, 1916.

[Seal]

ED. T. SMITH,

Notary Public, in and for the County of Kings, State of California.

[Endorsed]: Equity. Suit No. A—44. In the United States District Court, Southern District of California, Northern Division. Fred Stebler, Plaintiff, vs. Porterville Citrus Association, Defendant. Depositions of H. A. Beekhuis, A. Nieson and J. A. Hansford, Witnesses Produced on Behalf of Defendant. Filed Jul. 8, 1916. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [97]

Equity. Suit No. A—44. Fred Stebler, Plaintiff, vs. Porterville Citrus Association, Defendant, Depositions of H. A. Beekhuis, J. A. Hansford and A. Nieson. Witnesses Produced on Behalf of Defendant. From Ed. T. Smith, Hanford, Cal. Registered No. 80. Clerk of United States District Court, Southern District of California, Northern Division, Los Angeles, California. Return receipt demanded. 31,909. Los Angeles, Cal. Registered Jul. 8, 1916. [98]

Hanford, Cal., July 7th, 1916.

M N. A. Acker, Attorney at Law,
To ED. T. SMITH, Dr.
Searcher of Records.

Abstracts and Certificates of Title on Kings County
Lands.

Hill Building,

Opposite Court House,

Notary Public.

Telephone Main 343J. Conveyancing.

To taking depositions in Equity Suit No.

A-44, in the United States District Court,

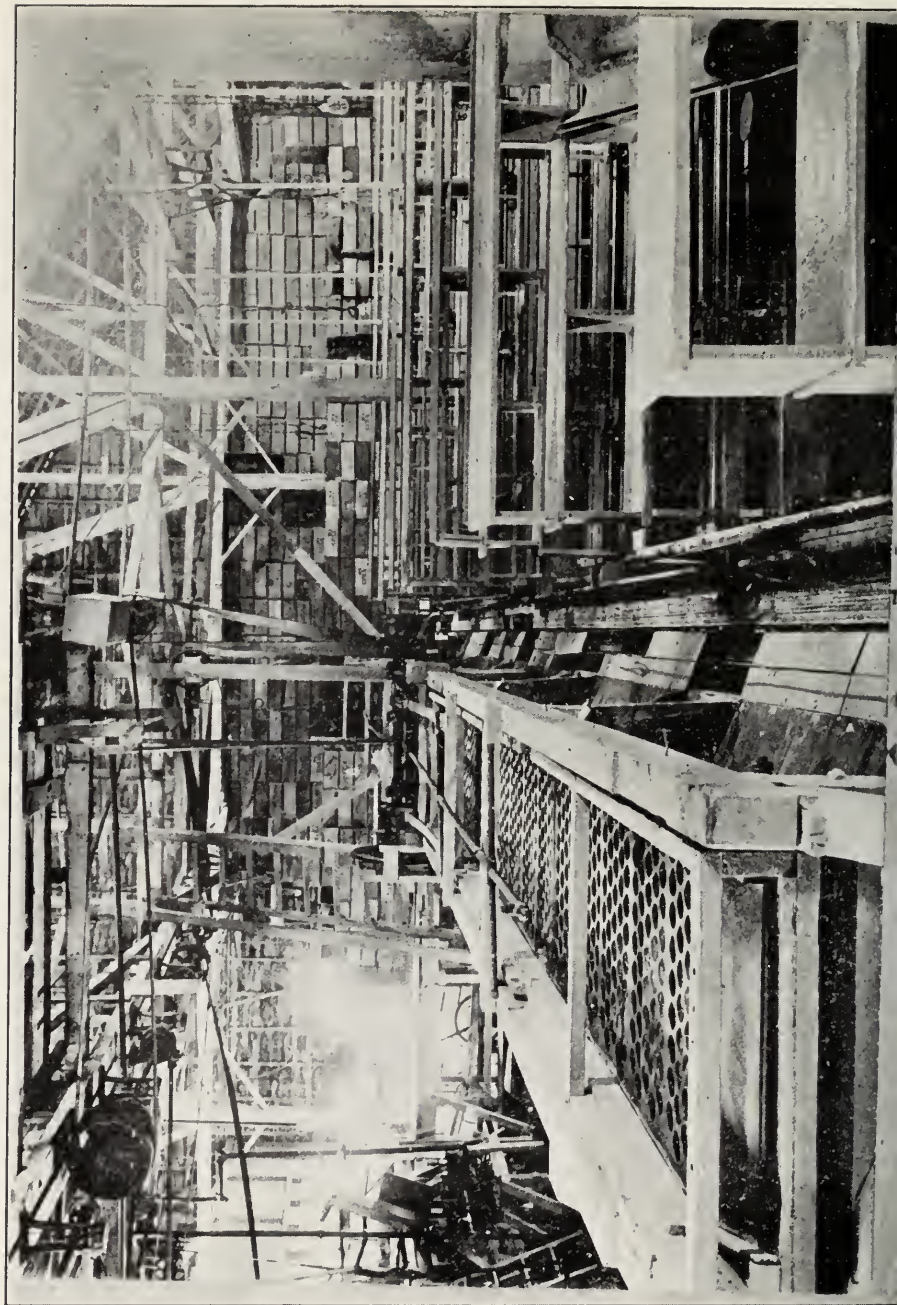
Southern District of California, North-

ern Division. 68 folios at .30¢.....\$20.40

To swearing witnesses (4) oaths administered\$ 4.00

Expense of mailing and preparing papers...\$ 1.20

[99] \$25.60



[Endorsed] : Filed Jul. 8, 1916. Wm. M. Van Dyke,
Clerk. By Chas. N. Williams, Deputy Clerk.

[Endorsed] : Filed Jul. 8, 1916. Wm. M. Van Dyke,
Clerk. By Chas. N. Williams, Deputy Clerk.

H. A. BEEKHUIS.
FRUIT GRADER.

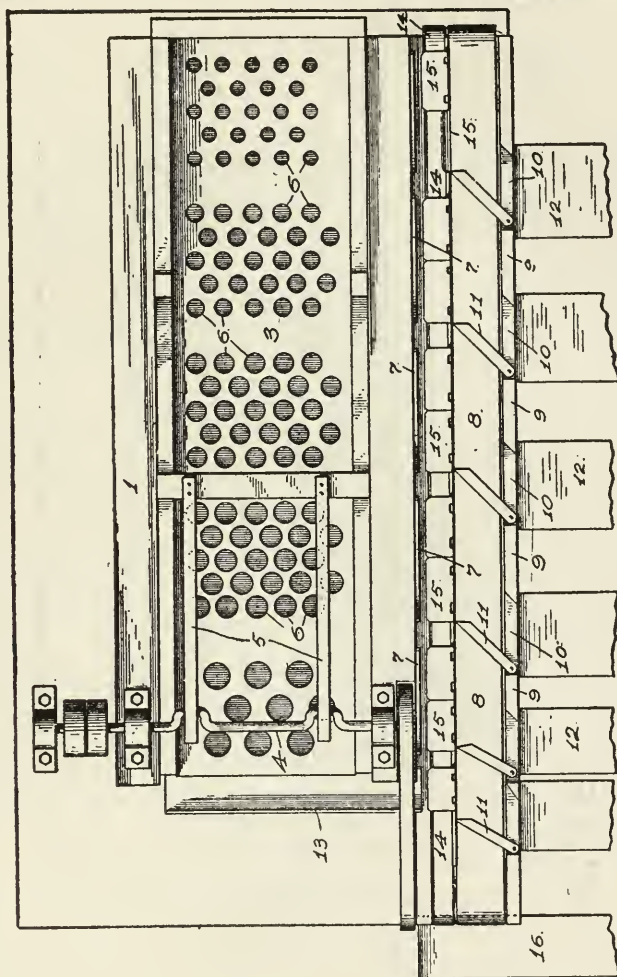
APPLICATION FILED FEB. 20, 1908

Patented Dec. 15, 1908.

2 SHEETS—SHEET 1.

906,805.

Fig. 1.



INVENTOR.

WITNESSES.

Arthur L. Miller
W. A. Allen

Hermanus Albert Beekhuis
by *Wm. C. Booth*
his Attorney

H. A. BEEKHUIS.

FRUIT GRADER.

APPLICATION FILED FEB. 20, 1908.

906,805.

Patented Dec. 15, 1908.

2 SHEETS—SHEET 2

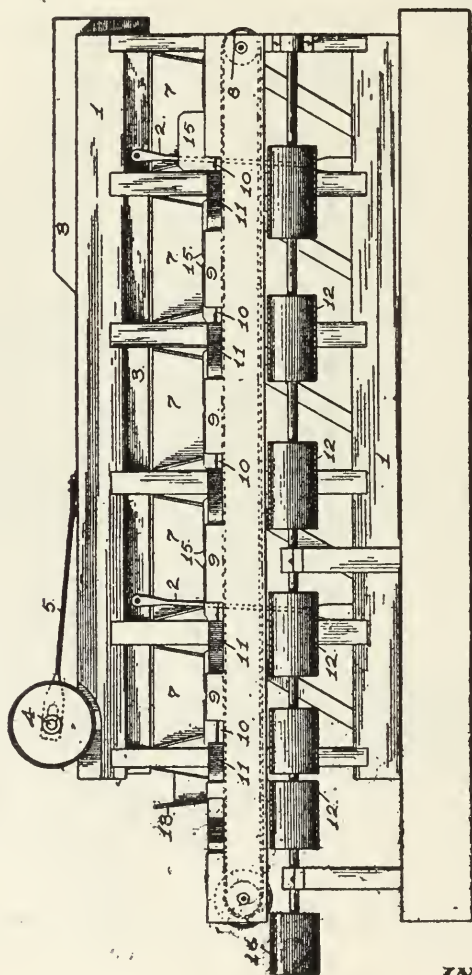


Fig. 2.

WITNESSES.

Arthur L. L. L.

J. J. J.

INVENTOR.

Hermanus Albert Beekhuis

By H. J. Booth

his Attorney

UNITED STATES PATENT OFFICE.

HERMANUS ALBERT BEEKHUIS, OF HANFORD, CALIFORNIA, A
SIGNOR TO CALIFORNIA FRUIT CANNERS ASSOCIATION, OF SAN
FRANCISCO, CALIFORNIA, A CORPORATION OF CALIFORNIA.

FRUIT-GRADER.

No. 906,605.

Specification of Letters Patent.

Patented Dec. 15, 1908.

Application filed February 20, 1908. Serial No. 416,819.

To all whom it may concern:

Be it known that I, HERMANUS ALBERT BEEKHUIS, a citizen of the United States, residing at Hanford, in the county of Kings and State of California have invented certain new and useful Improvements in Fruit-Graders, of which the following is a specification.

My invention relates to the class of fruit-graders, and it consists in the novel constructions, arrangements and combinations of parts which I shall hereinafter fully describe.

The object of my invention is to separate fruit according to size, and to rapidly, economically and effectively handle the different grades, thus adapting the machine for use in canning plants, where these results are important.

Referring to the accompanying drawings, Figure 1 is a plan of my machine. Fig. 2 is a side elevation of the same.

1 is a frame in which is supported, upon spring standards 2, the grading table 3, to which a shaking motion is imparted by suitable means, here shown as consisting of the crank-shaft 4 and connecting links 5.

The grading table is provided with holes 6, arranged in groups, the holes in successive groups, being graduated in size, those of the first group, at the head of the table where the fruit is supplied to it, being the smallest, and those at the foot of the table being the largest.

Under each group of holes is a chute 7, each chute leading and directing its fruit to a traveling carrier 8. The outer fixed guard 9 of this carrier has gate-ways 10, each of which is controlled by a switch-gate 11 which is adapted to be turned inwardly at an angle over the carrier, in order to divert the fruit thereon to and through the gate-way.

Beyond each gate-way is a traveling carrier 12 which is supposed to lead to the canning tables or other destination for the graded fruit.

At the foot of the table 3 is a trough 13 which receives the largest size of fruit which is unable to pass through the table holes, and delivers it to the carrier 8.

Now, in case any one grade of fruit is delivered at the canning table or other destination in too great quantity to be properly handled, I provide for diverting said grade,

either in whole or in part, to supplementary or additional canning tables or destination. This is done as follows:—Between the inner side of the carrier 8 and the delivery ends of the chutes 7 lies a supplementary traveling carrier 14, Fig. 1. Above this carrier are arranged swinging bridges 15, which when turned down overlie the said carrier and span the space between the delivery ends of the chutes 7 and the main carrier 8; and when turned up, bar the passage to said main carrier and expose the supplementary carrier, as is shown, in one instance, in Fig. 1. Each of these bridges is best divided into sections, so that either the whole, or only a portion of the particular grade may be diverted to the supplementary carrier 14. At the end of the supplementary carrier is carrier 16 which leads to additional canning tables or destinations.

The operation of the machine is as follows:—The fruit, say, for example, previously divided, pitted and peeled peaches, is supplied to the head of the grading table and is thereon shaken and advanced. The smallest fruit drops through the first group of holes, and travels by gravity down the underlying chute 7, and over the turned down bridge 15, to the carrier 8. Advancing with this carrier, the fruit meets and is deflected by the switch-gate 11, through the gate-way 10, to the carrier 12, by which it is taken to the canning table. Each grade is similarly and separately treated.

When desired, two or more grades may be blended; as, for example, if the smallest grade and the one next larger are required to be blended, the first switch gate can be left in position to keep its gate-way 11 closed, and the next gate may be swung over the carrier 8, in order to divert both grades to the same carrier 12. But, if there should be more of any grade than the operators at the canning table can properly handle, say, for example, the smallest grade, then the bridge 15 of this grade, or one section of it as shown, is turned up to obstruct the passage of the whole or a portion of said grade to the main carrier 8. By this turned up bridge, or section thereof, said grade, or a portion of it, falls upon the supplementary carrier 14, by which it is carried along under all the other recumbent bridges, (which are high enough above said carrier to permit such passage) and is delivered to the end

carrier 16, which takes it to an additional canning table at which it can be handled.

Having thus described my invention, what

I claim as new and desire to secure by Letters Patent is:—

1. In a fruit-grader, the combination of a grading table, underlying chutes to receive each grade, a traveling carrier common to all said chutes and to which they separately deliver their fruit, means for separately diverting the grades from said carrier, a supplementary traveling carrier, and means for diverting any grade from its course to the main carrier, to said supplementary carrier.

2. In a fruit-grader, the combination of a grading table, underlying chutes to receive each grade, a traveling carrier common to all said chutes and to which they separately deliver their fruit, means for separately diverting the grades from said carrier, a supplementary traveling carrier interposed between the main carrier and the delivery chutes, and means for diverting any grade, from its chute, to the supplementary carrier.

3. In a fruit-grader, the combination of a grading table, underlying chutes to receive each grade, a traveling carrier common to all said chutes and to which they separately deliver their fruit, means for separately diverting the grades from said carrier, a supplementary traveling carrier interposed be-

tween the main carrier and the delivery chutes, and swinging bridges overlying the supplementary carrier to normally carry the fruit from the chutes to the main carrier, and adapted, when raised, to bar the passage of the fruit to said main carrier and to effect its delivery to the supplementary carrier.

4. In a fruit-grader, the combination of a grading table, underlying chutes to receive each grade, a traveling carrier common to all said chutes and to which they separately deliver their fruit, means for separately diverting the grades from said carrier, a supplementary traveling carrier interposed between the main carrier and the delivery chutes, swinging bridges overlying the supplementary carrier to normally carry the fruit from the chutes to the main carrier, and adapted, when raised, to bar the passage of the fruit to said main carrier and to effect its delivery to the supplementary carrier, and a carrier to separately dispose of the fruit from the supplementary carrier.

In testimony whereof I have signed my name to this specification in the presence of two subscribing witnesses.

HERMANUS ALBERT BEEKHUIS.

Witnesses:

D. H. LATIMER,

J. H. FARLEY.

*In the District Court of the United States, for the
Southern District of California, Northern Di-
vision, Ninth Circuit.*

A-44—IN EQUITY.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,
Defendant.

A-45—IN EQUITY.

FRED STEBLER,

Plaintiff,

vs.

MID-CALIFORNIA CITRUS ASSOCIATION,
Defendant.

A-50—IN EQUITY.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,
Defendant.

Reporter's Transcript—July 11, 1916.

Filed Aug. 8, 1916. Wm. M. Van Dyke, Clerk.
By Chas. N. Williams, Deputy Clerk. [106]

*In the District Court of the United States, for the
Southern District of California, Southern Divi-
sion, Ninth Circuit.*

Hon. OSCAR A. TRIPPET, Judge.

A-44—EQUITY.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,
Defendant.

A-45—EQUITY.

FRED STEBLER,

Plaintiff,

vs.

MID-CALIFORNIA CITRUS ASSOCIATION,
Defendant.

A-50—EQUITY.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,
Defendant.

APPEARANCES:

For Plaintiff: FREDERICK S. LYON, Esq.

For Defendant: N. A. ACKER, Esq. [108]

Los Angeles, Cal., Tuesday, July 11, 1916.

10 o'clock A. M.

The COURT.—Stebler vs. Porterville Citrus Association, three cases. Have you entered into a writ-

ten stipulation about these cases?

Mr. LYON.—No written stipulation. I find my client, Mr. Stebler, has been delayed in getting here by some kind of accident, but I don't believe it will be necessary for us to wait at all.

Now, there are three of the cases; A-44 and A-45 involve identically the same machines, and I suppose it will be that A-45, the Mid-California case shall abide the issue in A-44. Is that correct, Mr. Acker?

Mr. ACKER.—Yes.

Mr. LYON.—And for the purpose of conserving time, as the issues in A-50 refer to identically the same machine as in A-44, those two cases may be heard together, and all of the testimony which is pertinent to one case will be referred to by counsel. Is that correct?

Mr. ACKER.—Yes.

The COURT.—Do you want to make any order about the reporter?

Mr. LYON.—Well, nothing except the reporter shall—

The COURT.—As a rule of court, I mean an equity rule, to which my attention was called, about transcribing testimony costs. It may affect the charging of the costs. [109]

Mr. LYON.—In that connection, the reporter will transcribe the entire testimony and file a transcript for the Court, and furnish counsel for each side with a copy of it. The original bill will be divided half and half and be taxable as costs.

The COURT.—That is the stipulation in the case.

Mr. LYON.—I suppose a short opening statement—

Mr. ACKER.—I would like, Mr. Lyon, before we proceed with a statement, I will request that counsel specify, in view of the fact that one of the patents in suit involves something like approximately forty claims, and the other a large number of claims, that counsel specify which of the claims of the Stebler patent cover the distributive system, that he relies on for infringement, and which of the claims of the Thomas Strain patent he relies on as to the charge of infringement.

The COURT.—I believe I have copies of the patents, haven't I, Mr. Lyon?

Mr. LYON.—I think you have, of two of them, not of the third.

The COURT.—Excuse me for a minute. I will get what I have. (Leaving room.)

The COURT.—All right, proceed.

Mr. LYON.—Of the Robert Strain reissue No. 12297, the claims involved are claims 1 and 10.

The COURT.—Now, let us read those two claims. (Reading): [110]

“In a fruit-grader, in combination a plurality of independent transversely-adjustable rotating rollers; a non-movable grooved guide lying parallel with the plane which passes vertically and longitudinally through the center of said rollers, said rollers and guide forming a fruit runway; a rope in the groove in said guide and means to move said rope.”

“In a fruit-grading machine, a runway formed

of two parallel members, one of said members consisting of a series of end-to-end rolls, brackets carrying the rolls, guides for the brackets, and means for adjusting the brackets upon the guides, substantially as set forth."

Mr. LYON.—Those are the two claims which are involved in the suit of Stebler against the Riverside Heights Orange Growers' Association and George D. Parker.

The COURT.—How is that?

Mr. LYON.—Those are the two claims which were involved in the suit of—

The COURT.—Oh, they were involved?

Mr. LYON.—Yes. And circuit number 1562, I think, in this court, and in the United States Court of Appeals, for the Ninth Circuit, No. 2292, the decision or opinion in which is reported in 205 Federal, page 735. I have a short and convenient pamphlet copy of the decision. (Handing copy of the decision to the Court.) Those claims have also been before this court several times, but that is the [111] Court of Appeals' decision. I hand you a pamphlet copy which contains an exact copy of the opinion of the Court.

The COURT.—Sir?

Mr. LYON.—That is an exact copy of the opinion of the Court in short pamphlet form.

Mr. ACKER.—That decision has been reported.

The COURT.—I don't understand you, Mr. Acker.

Mr. ACKER.—That decision is reported in the Federal Reporters.

Mr. LYON.—In 205 and 735.

The COURT.—Now, do you desire to call my attention to any particular part of this decision?

Mr. LYON.—Not at the present moment. I want to finish the election as to these claims counsel has asked.

Now, in regard to the Stebler patent No. 943,799, or distributing apparatus, we claim infringement of the claims 1, 2, 3, 4, 5, 6, 8, 11, 12, 14, 15, 16, 17, 18, 19 and 20.

The COURT.—Well, all except 7 and 9 and 10.

Mr. LYON.—And 13.

The COURT.—7, 9 and 10 and 13.

Mr. LYON.—That patent was before this court, as we will show your Honor before we get through, in the case of Stebler, plaintiff, against the Pioneer Fruit Company, Northern Division, No. 207, an action at law, which was tried before Judge Wellborn, and that pleading has been, or that suit has been pleaded in the bill of complaint, and a prior adjudication, [112] showing the validity of this particular patent.

The COURT.—That suit was against whom?

Mr. LYON.—The Pioneer Fruit Company, and we plead that the Porterville Citrus Association also became a licensee as to certain specified machines by settlement at that time. That, I believe, is controverted, however, by the defendant.

Mr. ACKER.—That the defendant denies.

The COURT.—You claim that the Porterville Citrus Association became a licensee of what?

Mr. LYON.—Of this Stebler patent No. 943,799, and of the Strain reissue patent No. 12,297, in regard

to some three particular specified machines, but not with regard to any other, and that, as in accordance with the terms of that agreement of settlement and license, they acknowledged the validity of these patents for all purposes, and when I say these patents, I mean the Strain reissue patent and the Stebler patents No. 943,799.

The COURT.—Now, that is denied, as I understand it?

Mr. LYON.—That is one of the issues.

The COURT.—From whom do you claim they became a licensee?

Mr. LYON.—From Mr. Stebler, after the decision in this case No. 207. They were operating either three or four of the machines, which in that case were held to have been infringements, and they paid a royalty and secured a license [113] for the further use of those machines, and agreed that the patents were valid and that they would not thereafter contest them or infringe them.

The COURT.—Was that in writing?

Mr. LYON.—The contracts are in writing, but I will have to prove the connection of the Porterville Citrus Association, as an association, with the particular subassociation which had the machines.

The COURT.—Oh, I see.

Mr. LYON.—That is the question of denial. There is no denial of the facts of those other machines. The only question is whether the Porterville Citrus Association control the litigation.

The COURT.—This association would be bound by that agreement?

Mr. LYON.—Yes.

Mr. ACKER.—Just one minute, Mr. Lyon. I understand you are making that statement as to the Porterville Citrus Association. We have a stipulation in this case that the Mid-California Citrus Association shall be bound by the decree rendered in this case. Now, of course, that stipulation does not apply as to any proposition relative to a license or non-license between this complainant and the Porterville Citrus Association.

Mr. LYON.—That is understood. Now, with regard to the third patent in suit, the Thomas Strain—
[114]

The COURT.—Now, before you get away from that, what is the effect of whether or not they had a license or nonlicense on this case?

Mr. LYON.—Solely to prohibit them from contesting either of these patents, or whether it would be a novel invention.

The COURT.—That question would be left open to the Mid-California Citrus Association?

Mr. LYON.—It would be left open to that association. Now, referring to the Thomas Strain patent, No. 775,015, dated November 15th, 1904—

The COURT.—That is the original patent?

Mr. LYON.— —which is a patent to another Strain, and not to the same Robert Strain, and which was subsequent to the Robert Strain patent, and that patent we charge infringement of claims 1, 5, 7, 8, 9, 10, 11, 12, 13, 16, 18, 19, 24, 26, 31, 36 and 37. The apparatus or machines which are charged to infringe each of these three patents were manufactured avow-

edly by George D. Parker, who was one of the defendants in the suit to which I called your Honor's attention, and which was decided by the Circuit Court of Appeals.

The COURT.—How is that, Mr. Lyon? The suit of the machines in controversy.

Mr. LYON.—Were manufactured by Mr. George D. Parker, one of the defendants, who was a party to the suit of Stebler [115] against the Riverside Heights Orange Growers' Association, and George D. Parker, decided by our Circuit Court of Appeals and reported in 205 Federal, 735, the decision to which I first called your Honor's attention. I think it will be stipulated, and I will ask Mr. Acker if that is correct, that Mr. Parker at his cost and expense, and under contract to that effect, is defending these suits.

Mr. ACKER.—I know nothing about any contract one way or the other.

Mr. LYON.—Well, Mr. Parker is defending the suits at his cost and expense openly.

Mr. ACKER.—The Porterville Citrus Association is defending the suits. I presume Mr. Parker, as the manufacturer, has undertaken to defray the expense of it.

Mr. LYON.—We can save time if you will tell us what the exact facts you are willing to stipulate in that connection are.

Mr. ACKER.—I don't see it has any bearing, Mr. Lyon. The materiality of it is not apparent. Mr. Parker is not a defendant—party defendant—to this suit or privy one way or the other.

Mr. LYON.—Well, we will proceed. The machines, as we will show, were put into these packing-houses by a Mr. George D. Parker, in actual competition with a bid from Mr. Stebler, and were under an agreement that if the Court held that they were infringements, then Mr. Parker agreed to [116] secure Stebler machines and place them in the packing-houses. I do not know how he was going to do that, but that was part of the asserted agreement, and therefore, as we will show the Court, it was in direct competition with our machines and for the purpose of taking our business away from us directly, and with a full knowledge on the part of the defendants, the nominal defendants, Porterville Citrus Association, or Mid-California Citrus Association, as upon the part of the actual defendant, George D. Parker, in this litigation, and I say actual defendant because we assert that Mr. Parker is actually controlling the defense of this litigation, and therefore that so far as this litigation is concerned, and so far as the patent reissue No. 12,297 to Robert Strain, and claims 1 and 10 thereof, the decision in the case reported in 205 Federal, 735, is *res adjudicata*, and that question if the validity of the patent, and of claims 1 and 10 is not open to dispute to these defendants, nor is there any contest to be made in this court, either by the complainant here, Fred Stebler, or by the defendants, as to the interpretation which must be placed upon and the scope given to claims 1 and 10 of that patent. In other words, that the decision of the Circuit Court of Appeals in that case, and the interpretation that they place upon those claims is binding upon all of

the parties, and upon the defendant, George D. Parker here, controlling the defense of these cases.
[117]

The COURT.—You say “defendant.” He is not an actual defendant?

Mr. LYON.—No; but I will assume the first thing I do in the case will be to prove the fact that he is actually controlling the defense and therefore avowedly and openly has done so and under contract to do so, and, therefore, inasmuch as he is the one that is really defending the suits, and at his cost and expense, he is really the real defendant, and that the nominal defendants, Porterville Citrus Association and Mid-California Citrus Association are bound and in his shoes.

Now, that statement, however, does not apply to either the Stebler patent on the distributing apparatus, No. 943,799, or to the Thomas Strain patent, No. 775,015, those being new, so far as the defendant Parker is concerned, as well as the nominal defendants, Porterville Citrus Association or Mid-California Citrus Association.

The evidence will show this: That after the bringing of the suits A-44 and A-45, certain changes were made in those machines whereby, instead of relying wholly upon the individual adjustment of the rollers to make the individual adjustment of the grading openings, the machines were more fully equipped, so that the belts could be adjusted toward and away from the roller, so that by pressing the portion of the belt toward the roller, the space between the roller and the belt would be varied, thereby varying the

width of the [118] discharge opening and getting the regulation of the discharge opening in that respect and in that connection.

The COURT.—I think you had better repeat that, Mr. Lyon.

Mr. LYON.—I say that after the suits A-44 and A-45 were commenced, and a motion for temporary injunction made, and an order to show cause issued, certain changes were made in the infringing machines. Certain of the locking devices for locking the upper adjustment for adjusting the rollers toward and away from the belt were removed, and reliance was evidently placed upon means for moving a portion of the belt upward toward the roller, so as thereby to control the distance between the surface of the belt and the surface of the roller, securing in that manner, by the adjusting of the belt upward, or away from the roller, as desired, the adjustment on the aperture between them, and thereby, the adjustment of the discharge opening.

The COURT.—Well, you are referring to that fastening device that slides up and down and makes the rollers go up and down, and the cleat that was put under the belt, which could be raised up and down?

Mr. LYON.—That is correct, only, as we shall contend, and attempt to prove by evidence, that the fastening of the upper adjustment has not been permanent, and as the machines now show, since this court inspected those machines, practically everyone of them show that the upper adjustments [119] have been moved, and that while they did at one time hammer down the top of the bolts, all that was neces-

sary to make that adjustment was to put a wrench on the adjustment and they could turn them up and down, and merely riveting over the top of the bolt would not affect a permanent locking of those upper adjustments. However, as the evidence will show, they did take out part of the adjusting means, not removed effectively, but they took out a locking means they originally put in the machines.

Now, the defenses in the case, I anticipate, are with regard to the Stebler distributing system patent, No. 943,799, both anticipation, lack of novelty, and noninfringement, and I anticipate that those are the same defenses in regard to the Strain patent No. 775,015, although before opening the evidence, if the court desires, why, we might have a statement from counsel as to both defenses.

The COURT.—I would like to understand the evidence thoroughly before we start into it. Have you got any models in court?

Mr. LYON.—I haven't any models; I have photographs. Have you any models?

Mr. ACKER.—We will probably use models as the case proceeds. I don't think it is necessary, if your Honor please, that I attempt at this time to reply to any of the statements made by my friend, Mr. Lyon, regarding the issues which he intends to prove, or as regards this license, or [120] whether these defendants are bound by the doctrine of *res adjudicata*. I must say, as I listened to it, a most remarkable statement was made relative to the doctrine of *res adjudicata*, and I prefer to reserve that for the argument of the case.

As I view the case, there is no action on behalf of these defendants which would justify the application of the doctrine of *res adjudicata*, or by which this court could apply that doctrine as to these defendants.

The COURT.—There is another rule that is not just exactly *res adjudicata*, but in these patent cases they call it “persuasive” ruling upon the court in following the decision of another court.

Mr. ACKER.—I am not at this moment, if your Honor please,—I am not attaching as to the decision of the Court, the decision as to the Strain reissue patent is the decision of our Circuit Court of Appeals, and of course this court is going to follow that decision irrespective of anything I may say, but I will also say that this court is bound by that decision and cannot go beyond it one way or the other; that is not the point I have reference to as to the doctrine of *res adjudicata*.

The COURT.—I thought you were alluding to that fact that Mr. Parker was not a defendant here, and therefore that the doctrine of *res adjudicata* against these defendants where they got a judgment against Parker would not bind these [120½] defendants.

Mr. ACKER.—The point I have in mind, if your Honor please, that this is a different machine, the machine as now charged as to infringement, and has never been involved in any litigation in this court, and was not involved in the litigation that went to our Circuit Court of Appeals. It is a different machine; not the same machine, and when we come to the argument of the case, I will refer to it more fully,

that where the machine charged to be an infringement is a different machine, and the defendants are different, and the machine is different, that the doctrine of *res adjudicata* does not apply. We are entitled to our full day in court and a full hearing as to that new machine, and that would make no difference, even if Mr. Parker was the defendant, and it was a new machine, he would be entitled to all the defenses that would apply in an original action, but that I will reply to in the argument of the case. And I wish to say that counsel had correctly stated our position. We deny an infringement of the Thomas Strain and of the Stebler patents. We deny invention in those two machines, and we also maintain and will prove that the Strain re-issue patent, if attempted to be enlarged to include in the scope of its claims the device which is now being used by these defendants, that then that patent is invalid.

The COURT.—Are you claiming a patent on your device? [121]

Mr. ACKER.—We claim a patent on that device we are using, and which is involved, and we have a patent on the device which is involved and which is charged to be an infringement of the Fred Stebler patent, and that we will produce and all proper evidence.

The COURT.—Have you got a copy of your patent?

Mr. ACKER.—A copy of our patent? Yes, if your Honor please. (Handing copy to Court.) This happens to be the only copy I have.

The COURT.—Sir?

Mr. ACKER.—This happens to be the only copy I have.

The COURT.—Is this a patent on that machine I saw?

Mr. ACKER.—That is a patent on what they charge to be the distributing feature, as an infringement of the Fred Stebler patent.

Mr. LYON.—What is the number of that?

Mr. ACKER.—His Honor has the number before him.

The COURT.—It is number 1,145,079, serial number 810,121.

Mr. ACKER.—And we will prove by the evidence that claim 10—I will look at the claim in a minute—I believe it is claim 10 on that, anyway, the last claim of that patent, covers the device which is being used by the defendants herein, and which is charged to be an infringement of the said Stebler distributing patent system.

Mr. LYON.—One other preliminary matter I overlooked. [122] There is in this litigation no contest as to the corporate existence of the defendants; that is admitted to be as alleged in the bill of complaint. There is no denial of the title to the Robert Strain reissue patent No. 12,297, and the Stebler No. 943,799, being in the complainant as alleged in the bill of complaint. That is correct, isn't it?

Mr. ACKER.—That is correct, yes.

Mr. LYON.—In regard to the Thomas Strain patent, I will ask counsel if he will stipulate that the title to that is in the complainant, as alleged in the

bill of complaint? I proffer him at this time certified copies of the assignments.

Mr. ACKER.—I will admit title, Mr. Lyon.

The COURT.—The plaintiff owns all of the patents in controversy which they claim?

Mr. LYON.—Yes; and I will ask that Mr. George D. Parker be called to the stand. [123]

Testimony of George D. Parker, for Plaintiff.

GEORGE D. PARKER, a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. LYON.)

Q. Your name is George D. Parker?

A. Yes, sir.

Q. You reside in Riverside, California?

A. Yes, sir.

Q. What is your business?

A. Manufacturer of fruit-grading machines and weighers.

Q. Are you the George D. Parker who was one of the defendants in that suit in equity in this court entitled Fred Stebler, complainant, against Riverside Heights Orange Growers Association and George D. Parker? A. Yes.

Q. I think the number of it was Circuit Court No. 1562, and it went to the Circuit Court of Appeals for the Ninth Circuit, case No. 2232 therein.

A. Yes.

Q. You furnished the machines to the Porterville Citrus Association and the Mid-California Citrus

(Testimony of George D. Parker.)

Association involved in the present case, did you?
[124] A. Yes.

Q. You are defending those cases at your cost and expense, are you? A. Yes.

Q. And are under contract with the Porterville Citrus Association and the Mid-California Citrus Association to defend these suits at your cost and expense? A. I don't quite understand that.

The COURT.—Q. Have you got a written contract? A. Yes.

Q. (By Mr. LYON.) Have you that written contract with you? A. No.

Q. Well, I will ask that that written contract be produced here. You can't get it before to-morrow, I suppose, can you, now? Where is it?

A. I don't know, but I suppose it is in the shop.

Q. You agreed to defend these suits against the claim that they are infringements of Mr. Stebler's patents, did you? A. Yes.

Q. And you have had charge of the defense of these suits and retained Mr. Acker to defend them, didn't you? A. Yes.

Q. And you are paying for the cost of that defense at the present time? A. Yes. [125]

Mr. LYON.—That is all.

Mr. ACKER.—No cross.

Testimony of Fred Stebler, for Plaintiff.

FRED STEBLER, the plaintiff herein, called as a witness in his own behalf being first duly sworn, testified as follows:

(Testimony of Fred Stebler.)

Direct Examination.

(By Mr. LYON.)

Q. You are the plaintiff in this suit, Mr. Stebler?

A. Yes, sir.

Q. And in what business are you engaged?

A. Manufacture of packing-house machinery.

Q. And you are the same Fred Stebler who was complainant in the suit of Fred Stebler, complainant, against the Riverside Heights Orange Growers Association and George D. Parker in this court?

A. Yes.

Q. To which I have referred? A. Yes.

Q. And the owners of the letters patent here in suit? A. Yes, sir.

Mr. LYON.—I offer in evidence as Plaintiff's Exhibit 1, the Strain reissue patent No. 12,297; as Exhibit 2, the Stebler distributing apparatus, patent No. 943,799; as Plaintiff's Exhibit No. 3, the Thomas Strain patent No. [126] 775,015. By way of interruption, Mr. Acker, I believe that we have no stipulation in this case that printed, uncertified copies of patents may be used with the same force and effect as the originals, subject to correction.

Mr. ACKER.—I thought we entered into that stipulation the other day.

Mr. LYON.—If we haven't made that stipulation, it will be so considered?

The COURT.—I don't understand you.

Mr. LYON.—That we may use with the same force and effect as originals, these uncertified copies or

(Testimony of Fred Stebler.)

printed copies of patents, which are much more convenient to have.

Q. How long, Mr. Stebler, have you been engaged in the manufacture of fruit-grading distributing apparatus? A. About seventeen years.

Q. And where? A. At Riverside, California.

Q. (By the COURT.) Where does Mr. Parker live? A. At Riverside.

Q. He lives at Riverside, too? A. Yes, sir.

Q. You live there? A. Yes, sir.

Q. (By Mr. LYON.) Did you ever have any business dealings with the Porterville Citrus Association, the defendant? A. Yes, sir.

Q. State what it was. [127]

A. Well, I have sold them packing-house machinery and graders and other devices of similar import.

Q. Did you have any business with them during the season of 1914 or '15?

A. I think I sold them some material in 1914. In 1915 I solicited their business for some packing-house machinery which I did not get.

Q. Do you know what they did in regard to packing-house machinery during the season of 1915?

A. I understand they accepted Mr. Parker's bid for the work under consideration, and that he installed it.

Q. Did you ever see the machines as they were installed? A. Yes, sir.

Q. On how many different occasions?

A. Along at least three different occasions.

Q. What was the first occasion, approximately?

(Testimony of Fred Stebler.)

A. I think the first occasion that I saw those machines was the last week in last December, at which time, you, myself, and the judge of this court inspected those machines.

Q. That was the second time, you say?

A. That was the first time I saw them.

Q. (By Mr. LYON.) I show you four photographs, and ask you if you know of what they were taken, or what they represent? (Handing photographs to the witness.)

The COURT.—Four, did you say?

Q. (By Mr. LYON.) Four, I said. [128]

A. These four photographs represent these fruit-graders in the packing-house of the Porterville Citrus Association at Porterville.

Q. Did you ever see such machines in operation?

A. Yes, sir.

Q. Will you please explain to us the operation and mechanical construction of said machines, particularly with respect to the grading and distribution of fruit, the fruit bins, and the manner or manners of adjustment possible of the grading openings, and of the distributing apparatus?

A. At the time of making this inspection of these machines referred to in my previous answer, while the machines were not in actual operation, they did start them for us and run some fruit through them, and, of course, we saw that action; and describing that, the fruit was fed on to one end of the machine and was carried forward by a belt conveyor, which is at an angle transversely to the roller; this travel-

(Testimony of Fred Stebler.)

ing belt conveyor and the roller forming the grade-way. We noticed, of course, that provision was made for adjusting the openings in this grade-way, which is the function of the grading machine, and we noticed that originally provision was made for adjusting the roller at the points, or at the grading aperture which is made near the joint, and that for some reason they had attempted to show that those means or adjustment had been discontinued by riveting the binder bolts in the slotted fastenings, which slots were originally [129] provided for making this adjustment.

Mr. ACKER.—If your Honor please, I don't care to interrupt the witness, but he is testifying as to descriptions of the machine which he saw in operation, and the witness is telling what something was made for, and then it was abandoned or closed off. Now, he has no knowledge on that subject; that is mere guesswork on his part. I wish the witness would confine his answer to what he knows regarding the machine illustrated by those photographs.

The COURT.—As to why those things were built that way. Of course, that is only his opinion, evidently.

Mr. LYON.—My question asked him to explain any other mode of operation and construction of the machines, using the photographs as far as he could, from his knowledge and inspection of them.

The COURT.—Well, with that he may proceed.

Q. Tell what you know about it and don't give your opinion until you are asked about it.

(Testimony of Fred Stebler.)

A. Well, of course, while I am speaking from the photographs I have before me of this machine, yet these photographs are an accurate description of the machine, and when I look at the photographs, its equivalent, are the same thing to me as though I were looking at the machine, and my reference to these means of adjustment, as I understood was called for in the question, as adjustment is necessary. It is evident, I should say, from the appearance of these photographs, that these slotted castings were put there for a [130] purpose, the only purpose of which could be to accomplish this adjustment. I think it was explained at the time that we inspected these machines that such was the purpose of these castings originally, and it was also explained to us that for certain reasons this adjustment—they had chosen to undertake to abandon it.

Mr. ACKER.—Now, if your Honor please, I must object.

Q. (By Mr. LYON.) Instead of telling us what that conversation was, please tell us how these machines would work with that kind of adjustment, and so forth. That is the question.

Mr. ACKER.—The question calls, if your Honor please, as to his knowledge of this machine and whether these photographs represent that machine, and it is not necessary for this witness to give us his opinion.

The COURT.—I don't think so either.

Mr. ACKER.—We want the evidence as to that machine as he knows it, and he has testified that the

(Testimony of Fred Stebler.)

first time he inspected the machines was when his Honor was present.

The COURT.—All he said since he was interrupted will be stricken out.

Mr. LYON.—Please note an exception.

The COURT.—That is, if Mr. Acker wants it stricken out.

Mr. ACKER.—I wish it stricken from the record.

Q. (By Mr. LYON.) Now, Mr. Stebler, please tell us how with that machine, or with those machines, the adjustment of [131] the grading way can be or could be secured, as you inspected the same, from your own knowledge of the inspection of the machines.

A. The adjustment of the grade-way can be accomplished in two ways. It could be accomplished by adjusting the slotted castings shown at the top of these photographs on top of the machines by means of which the grading aperture could be altered, either made greater or less, and it could also be accomplished by adjusting the belt conveyor which forms one side of the grade-way.

Q. Now, you say adjusting these castings at the top would adjust the grading openings. Tell us how that adjustment could be accomplished in those machines.

A. Simply by loosening the binder bolts and sliding the castings and moving the bolts in the slots.

Q. And sliding these castings would affect what part of the machines?

A. It would affect the grading aperture by means

(Testimony of Fred Stebler.)

through the medium of moving the roller, the location of the roller, with reference to the opposing belt.

Q. Now, what was the form of those rollers in that machine?

A. They were elongated wooden rollers in sections, one end of which was of considerably reduced diameter.

Mr. LYON.—I will offer in evidence the four photographs.

Q. (By the COURT.) What do you mean by “elongated”? [132]

A. Well, what I mean by “elongated” was a wooden roller of considerable length.

Mr. LYON.—I offer in evidence the four photographs and ask that they be marked Plaintiff's Exhibits 4, 5, 6 and 7, respectively. Just mark them now, as I wish to use one of them immediately. (Photographs referred to were marked by the clerk.)

Q. Referring now to Plaintiff's Exhibit 7, what kind of a view of that machine is that?

A. That seems to be almost a top plan view; not taken exactly from the top, but enough above the machine to give practically a plan view of it and of the grading rollers and the grading aperture.

Q. Does this photograph show the rollers of two diameters of which you have last referred?

A. Yes, sir.

Q. Now, please explain first what the effect in that machine of adjusting one of the brackets at the small end of one of those rollers would have upon the grading or discharge opening made between it

(Testimony of Fred Stebler.)

and the belt, and also what effect, if any, it would have on the preceding gradeway or opening?

A. Well, adjusting any one particular bracket would have the effect of either increasing or decreasing the grade opening at that particular aperture, and the grade opening is in this case the small end of the roller. [133] In other words, the grade aperture is only at the small end of the roller. Therefore, moving this casting one way or the other, or moving this bracket, has the effect of increasing or decreasing this grade opening, but it would have no effect on any other grade opening absolutely. This particular grade opening only comes to the bracket adjustment. No adjacent grade opening would be affected by adjusting any particular bracket. [134]

Q. Why not?

A. Simply because the enlarged diameter of the roll precludes affecting a—precludes there being any great opening except at the reduced end of this roller.

Q. You are familiar with the Parker machines involved in the suit of Stebler against the Riverside Heights Orange Growers Association and George D. Parker and referred to by the Circuit Court of Appeals in its opinion as the Parker patent machine?

A. Yes, sir.

Q. And to the overlapping guide-arms of that machine? A. Yes, sir.

Q. What correspondence in function is there between the enlarged portion of the rollers and these machines of the photographs before you and such

(Testimony of Fred Stebler.)

overlapping guide-arms in the Parker patent machine?

MR. ACKER.—The question is objected to as immaterial, irrelevant and incompetent. The record in that case is the best evidence, what machine was held in that case as being an infringement and the manner in which it worked, and it is further objected to as there is no testimony given by this witness as to ever having seen these machines with any adjustment imparted to the rollers. Now, the machine that was involved in the case that went to the Circuit Court of Appeals was a machine where the rollers were independently adjustable towards a traveling belt. [135] This machine your Honor inspected at Porterville, the witness has not testified so far that he ever saw any adjustment to these rollers. He says by some manipulation or mutilation, so to speak, of those machines you could do something. I object to that line of examination.

MR. LYON.—Read the question in view of the argument. (Last question read by the reporter.)

THE COURT.—Now, that is calling for the opinion of the witness, sort of an expert proposition.

MR. LYON.—It is absolutely that. It is absolutely addressed to him as an expert. I think his qualifications as an expert for this case can be conceded and are sufficiently before the Court.

THE COURT.—Well, the other machine has not been described yet.

MR. LYON.—Well, that is all before the Court. It will be by reference to that case.

(Testimony of Fred Stebler.)

The COURT.—All right. The objection is overruled.

Mr. ACKER.—Exception.

A. The function, or the corresponding function between the enlarged end or diameter of this wooden roller of the Porterville Citrus Association and the graders involved in this case, and the overlapping guide-arms in the so-called Parker graders at the Riverside Heights Orange Growers Association is identical in that they simply block out and close the grade-way, so far as any grading aperture is concerned, in [136] both instances, the grading aperture being at a certain point. In reference to these overlapping guide-arms, they are, of course, the diameter of the roller in both machines.

Q. (By the COURT.) What do you mean by “overlapping guide-arms”?

A. The machines referred to having these devices, there was two wooden overlapping sticks in the grading aperture overlapping in this manner (indicating) in the grade-way or path of the fruit.

Q. But you are talking about these arms that run down towards the belt, towards the box.

A. I am, your Honor. There is a model of that machine in this court that was used as an exhibit in this case. The rollers in the machine were spaced a distance of about 18 inches or 20 inches, and from each roller there was extended an arm from adjacent rollers running in opposite directions which overlapped so that when you moved a roller those arms rolled.

(Testimony of Fred Stebler.)

The COURT.—Gentlemen, I will say to you that my education and information concerning drawings does not enable me to comprehend the mechanism as readily as I can by seeing a model.

Mr. LYON.—Let us see then, your Honor—

The COURT.—A photograph is better than a drawing ordinarily.

Mr. LYON.—I think then if we can take an adjournment at this time until 2, we can have that model brought up here; [137] it is downstairs.

The COURT.—Until 2? Can't you go ahead with something else?

Mr. LYON.—That is an examination regarding that particular thing.

The COURT.—We will take a recess of 5 minutes.

Mr. LYON.—I will ascertain if it is still upstairs during that 5 minutes.

(Recess.)

Mr. LYON.—We have brought down from the model room the model of the so-called Parker patented grader, as it was in the Court of Appeals in case number 2232, and was an exhibit in the suit 1562.

Q. Mr. Stebler, explain to the Court the overlapping guide-arms?

A. These are the overlapping guide-arms. (Indicating on model on table.)

Q. Now, in what respect was it that you said the enlarged ends of the rollers in the defendants' machines in this case correspond in function and effect to the overlapping guide-arms?

A. It will be noticed that these overlapping guide-

(Testimony of Fred Stebler.)

arms close the grading apertures. Without these overlapping guide-arms, of course, the fruit would not be carried from one grader to the next. The function is found in this roll here, instead of using the overlapping guide-arms, they simply extend the enlarged guide-arms, which has the [138] same force and effect of closing the grade-way, because it is obvious that oranges that will not go through here will be carried beyond, for the reason that the grading aperture is smaller. Therefore, the function of the enlarged diameter of this roll corresponds exactly to the overlapping guide-arms; so far as the closing of the grade-way is concerned, they are identical in function. The only difference between the overlapping guide-arms and the roller is that the overlapping guide-arms permit the longitudinal extension of the grading apertures which the rollers do not and are not essential.

Mr. ACKER.—Mr. Lyon, I would like to ask in order that the record may be clear and understandable, what is the materiality of this line of examination relative to this overlapping feature of the prior device?

Mr. LYON.—Simply a comparison of the defendants' machine as it now stands with the device which has already been held to be an infringement of this, and show that there is no material changes so far as infringement of the Robert Strain reissue patent claims 1 and 10 have been made, simply another colorable change like the modified Parker machines, held by the Master on the counting and by Judge

(Testimony of Fred Stebler.)

Bledsoe to infringe. In other words, that using the Porterville and Mid-California machines by adjusting on the top, why, it is an absolute infringement of claims 1 and 10 of the Robert Strain reissue, and practically identical as the same thing [139] as the guided machines.

Mr. ACKER.—If your Honor please, I object to this line of examination until it has been proven that there is an adjustability of the rollers, the sizing rollers of this Porterville machine. So far there has been no proof offered in this case.

The COURT.—I presume, Mr. Acker, the Court will have to decide that; it will have to decide whether those things are adjustable or not when the evidence is introduced.

Q. (By Mr. LYON.) Now, you, Mr. Stebler, also are familiar with the so-called Parker modified machines, which in case 1562 on the accounting before Lynn Helm, as Master, were considered, and which were shown to Lynn Helm at the Riverside Heights Orange Growers Association? A. Yes, sir.

Q. In what manner or to what extent does the arrangement of the belt and the roller section in these defendants' machines at Porterville correspond or differ in function and effect from the inter-relation of the belts and roller sections in those modified machines?

A. Why, there is really no material difference. There is some difference in the detail of construction and the manner of the making the roller mountings and placing them on the machine, but the co-

(Testimony of Fred Stebler.)

relation between the inclined conveyor belt and the roller is practically the same, and the machines [140] at the Riverside Heights Orange Growers Association had means for varying the grading apertures between the roller and the belt by means of moving the roll adjusting the roller. I find the same thing exists in the machines of the Porterville and Mid-California Associations.

Q. Where, in those machines, does that exist?

A. It exists, first of all, in this bracket shown in these photographs on the top of these machines wherein there are two bolts in slots, the adjustment being effected simply by moving the bolts in those slots and could have no other effect than to change the location of the roller with reference to the opposing belt conveyor. I also find in the Mid-California and the Porterville Association machines means for varying the grading aperture by adjusting the inclined belt conveyor.

Q. But referring now solely to the means for adjusting the roller sections and each one of the grade openings independently, you state that these bolts were riveted down when the Court inspected them in December last. To what extent were they riveted?

A. They appeared to be riveted all they could be.

Q. Was that an effective way of preventing the adjustments by that bolt and nut adjustment?

A. No, sir.

Q. Why not? [141]

A. Simply because by taking a wrench the nuts

(Testimony of Fred Stebler.)

could be turned enough to loosen them so the casting could be adjusted.

Q. Have you seen any of those machines since that time? A. Yes, sir.

Q. (By the COURT.) That is since that date I saw them, do you mean? A. Yes, sir.

Q. (By Mr. LYON.) Did you inspect any of these bolts at that time of this last inspection?

A. I was in the packing-house both of the Porterville Citrus Association and the Mid-California Citrus Association, I think, the first week in May of this year, at which time they were both in operation running fruit, and I went to each and every one of the machines and passed along them for the express purpose of noticing, if I could, whether adjustments had been *made them* since we saw them first in December, and it appeared to me, and I felt the appearances were clear, that a great many of these nuts had been backed up on the rivets, backed up where they had been riveted, enough to make an adjustment, not all of them, but I should say more than half of them.

Mr. ACKER.—Your Honor, I move to strike out the latter part of the answer from the record. The witness was asked, as I understand, whether any of them had been adjusted. [142] The answer is he saw nuts that appeared to him to be loosened.

The COURT.—That is his opinion. He could only give his opinion about that. He did not see them loosen them or otherwise. You can tell by the appearance of a nut whether it has been loosened or

(Testimony of Fred Stebler.)

not, I should think. Objection overruled—motion denied.

Q. (By Mr. LYON.) Now, Mr. Stebler, explain to us the adjustment of these defendants' machines at Porterville with respect to adjustment by moving a belt towards the small end of the roller sections? How is that accomplished in this machine? [143]

A. That is accomplished by the adjustment of a bolt and nut beneath the belt. In other words, in the belt support.

Q. And that causes a portion of the belt underneath the small diameter roller to be moved either toward or away from the belt?

The COURT.—From the roller?

Q. (By Mr. LYON.) From the roller.

A. Yes, sir.

Q. Proceed now and explain to us where the graded fruit is discharged in the defendants' machines, and how it is handled when discharged through the grade openings.

A. The fruit is discharged from the grade-way through the grading apertures, as we term them, which are the enlarged part of the opening, or the reduced end of the roller. Fruit passes from there to a series of conveyor belts, first of all, in the bottom of the machine and between the grade-ways. It passes from there out onto a distributing belt system running along an inclined deck at the upper edge of the receiving bins, and between the latter and the grade-ways in such a way as to be controllable as to where it shall be deposited.

(Testimony of Fred Stebler.)

Q. Now, what kind of bins are used in the defendants' said machines? A. Adjustable bins.

Q. Are these adjustable bins and partitions shown in [144] these photographs? A. They are.

Q. And they can be moved lengthwise of the grader? A. Yes, sir.

Q. As desired. Now, the bin space section corresponds in what degree with the length of the grader machine?

A. In this case it corresponds identically with the length of the grading machine—the grade-way.

Q. Is the last portion of the machine of the defendants used as a grading portion, or simply as an extension for bin space?

A. Well, there is an unused section at the last end of the grade-way in which the fruit passes; you might term it a grade-way. In other words, the grade-way itself terminates short of the bins and the aperture in that case simply takes care of the surplus, or anything that goes by.

The COURT.—I don't understand that.

A. Just at this end, the grade-way terminates with that roller. Everything beyond there drops through. (Indicating on the model.)

Q. (By Mr. LYON.) Then, in other words, the bin space is extended longer than the grade-way?

A. To that extent, yes.

Q. And what is this used for in the defendants' machines, as related to the adjustable bins and partitions?

A. It is used for the bin space. In other words,

(Testimony of Fred Stebler.)

the [145] bins extend in that sense beyond the grade-way enough to take care of this excess fruit.

Q. You are familiar, of course, with the devices manufactured under your—

Q. (By the COURT.) And then all fruit that wouldn't go through these other spaces would go off the grade-way after it passed these rollers?

A. Yes, sir; everything, large or small.

Mr. ACKER.—Just the same in this machine here and all other graders; they go over the end.

The COURT.—They go over the end, but yours would go off the side.

Mr. LYON.—It would terminate back there.

The COURT.—I say in this manner, it would go off the side, and here it would go over the end.

Mr. LYON.—Yes; that is right.

The COURT.—Is that right, Mr. Acker?

Mr. ACKER.—I think, your Honor, in these other devices they had things here to receive the fruit coming from here.

The COURT.—So far as this model is concerned, it would come off here.

Mr. ACKER.—We will come to that.

The COURT.—There are things that wouldn't come through here. Here now is the end of this thing. That is what they are talking about. The fruit would not be conveyed on past? [146]

Mr. ACKER.—This is what we call the overflow.

The COURT.—That is what I say. And that would come off the side?

Mr. ACKER.—Yes; as in all of them.

(Testimony of Fred Stebler.)

The COURT.—And this belt, it would hold on here until it got to the end of this roller.

Mr. LYON.—But as a matter of fact with this machine, Judge, they always provide something for this overflow to run off the side, but the point I was getting at, Mr. Stebler, was that the bin space on this machine of the defendants was extended longer than the grade-way? A. That is true.

The COURT.—This thing come out here longer? (Indicating on the model.)

Mr. LYON.—Longer than the actual grade-way.

Mr. ACKER.—To what extent?

Mr. LYON.—Well, the extent shown in the photographs is—

The WITNESS.—The extent of one bin.

Q. About 45 inches? A. Something like that.

Q. Now, can you tell us in what respects—

The COURT.—(Interrupting.) Has that got anything to do with this case?

Mr. LYON.—Yes; it will have to do with the distributing apparatus claims before we get through.
[147]

Q. Will you tell us in what respect, if at all, this distributing apparatus on the defendants' machines and to which you have referred, corresponds in interrelation of parts, or differs in interrelation of parts and functions with the distributing apparatus of your patent, Plaintiff's Exhibit 2?

A. Will you please read me that question?

(Last question read by the reporter.)

A. In my patent, a distributing belt extends be-

(Testimony of Fred Stebler.)

yond the grade-way, the function of which is to carry fruit beyond the point at which it egresses from the machine, not only as the depository for certain bins, but to also fill that bin its whole length, which could not be done except with some such traveling distributing means. I find that while the distributing means in these Porterville and Mid-California machines is different in detail from what it is in my machines, yet I find it performs the same function in practically the same way, for the reason that on my machine I employ a system of adjustable guide-ways with which to direct and determine the point at which this fruit is to be delivered to the bins. The same are to be found in these machines of the Porterville Citrus Association and the Mid-California Citrus Association.

Q. (By the COURT.) Their belt runs the other way from what yours does?

A. Yes; that is true, yet it accomplishes the same object. [148]

Q. (By Mr. LYON.) What has the adjustability of the bin partitions to do with this result of fruit distribution in the devices of your patent, Plaintiff's Exhibit Number 2, number 943,799, and in the defendants' machines at Porterville?

A. With a distributing system, its full value cannot be realized with stationary or fixed bin partitions. In other words, in order to be able to adjust or vary the size of these bins, is a very desirable object, and is facilitated very materially with this distributing belt, for the reason that there are times

(Testimony of Fred Stebler.)

when different bins—it is very desirable to vary them in size, lengthwise in the machine, and in order to do so, it is necessary to adjust the partitions, remembering, however, that since there are usually but ten grading apertures in the grader, there is a corresponding number of bins formed and created by these adjustable partitions. The size of these bins, however, are variable. It is very desirable, and it can only be accomplished to any perceptible extent by the use of the distributing belt, and as I said before, it is not alone the desirability to move these bins and change their location with reference to the grading apertures, but since these bins sometimes are made as long as 6 feet, it is obvious that unless some means were provided for distributing this fruit—in other words, scattering it out lengthwise on this bin, the bin itself would be of no value, and it is [149] one of the functions that we get with the distributing belt, and which we accomplish with the distributing belt.

Q. Why would a 6-foot bin be used? Why do you want a longitudinal extensibility of the bin for a given grade?

A. For the reason that it sometimes happens that fruit of a certain size, as might be determined, for instance, the 216 size, which means 216 oranges to the box, might be running excessively heavy in proportion to the other sizes, and in order to take care of them, the ordinary procedure of having one packer to the bin would not take care of them, and they must have one, two or three packers to this bin

(Testimony of Fred Stebler.)

in order to keep it down, as they call it, and therefore it is necessary to longitudinally extend the length of these bins.

Q. Then, why is it desirable and necessary to distribute the fruit through such bins?

A. Simply because if the fruit is delivered from the grading aperture by gravity, or by any other means, it would not distribute it, it would all pile up in one end of the bin, and therefore the extension of the bin would be invariable. The distributing belt, in that case, as the bin fills up, helps to edge it along, and move it along, and granted that it will at the beginning, within the distributing belts, fill up at one end of the bin, then when it becomes filled, it begins to move along.

Q. (By the COURT.) You mean, does it automatically? A. Automatically, yes, sir. [150]

Q. (By Mr. LYON.) When did you first put out a machine with a distributing apparatus like or embodying the invention of Plaintiff's Exhibit Number 2?

A. In the fall, I think, in October of 1907.

Q. That was prior to your application for letters patent? A. Yes, sir.

Q. And to what extent has such invention gone into use?

A. Well, practically every packing-house in the country now has become acquainted with its value; so much so, they demand it.

Q. In other words, at the present time practically no fruit-grading machines are being put out without

(Testimony of Fred Stebler.)

these distributing machines; it that correct?

A. Practically none.

Q. (By the COURT.) When did you say that you got out this patent?

A. The first machine was installed, I think, in October, 1907.

Q. (By Mr. LYON.) Where was that installed?

A. At the packing-house of the Mountain View Orange & Lemon Growers Association at Upland, California.

Mr. LYON.—We offer in evidence, in connection with the testimony of this witness, the judgment-roll, including the decrees in suit number 1562, Stebler against the Riverside Heights Orange Growers Association and George D. Parker. [151]

Mr. ACKER.—Objected to as immaterial, incompetent and irrelevant, and on the further ground it is a record of this court, and it is needless to incumber the record by the introduction of this evidence.

The COURT.—No; I think these records have got to be introduced in evidence at this time. I don't think the Court takes judicial notice of its records. The objection will be overruled.

Mr. ACKER.—Exception.

The COURT.—I think we will suspend, Mr. Lyon, until 2 o'clock now.

(Whereupon, at the hour of 12 P. M., an adjournment was taken until 2 o'clock P. M., the same day.) [152]

(Testimony of Fred Stebler.)

AFTERNOON SESSION—2 o'clock P. M.

FRED STEBLER, recalled.

Direct Examination Resumed.

(By Mr. LYON.)

Q. I show you another photograph, Mr. Stebler, and ask you, if you know of what that is taken? (Handing photograph to witness.)

A. This is a photograph of the same machine in the packing-house of the Porterville Citrus Association, taken from a different end, or opposite end from the others.

Mr. LYON.—We offer this in evidence as Plaintiff's Exhibit 8.

Q. You state that prior to the installation of this apparatus by the defendants you had been in negotiation with them to supply them with the graders and distributing apparatus. Are we to understand from that that prior to that time, and prior to the season of 1915 they had been using some of your graders with your distributing apparatus in that packing-house? A. Yes, sir.

Q. Are you acquainted with John A. Milligan?

A. I met Mr. Milligan, yes.

Q. Is he in any manner connected with the Porterville Citrus Association?

A. He is their manager. [153]

Q. I show you three letters, and ask you if you know what they are? (Handing papers to witness.)

A. They are letters received by me from the Porterville Citrus Association.

Q. And do you know the signature thereon?

(Testimony of Fred Stebler.)

A. Signed by John A. Milligan, secretary and manager.

Q. You received these through the United States mail? A. Yes, sir.

Mr. LYON.—We offer these letters in evidence as Defendants' exhibits—

The CLERK.—Plaintiff's Exhibit 9.

Mr. LYON.—Plaintiff's Exhibit 9.

The COURT.—Now, I will say, are these letters here going to have to be read? In any event, to see what the objection is to them, suppose you read them—either you or Mr. Acker, and then if Mr. Acker desires to make objection to them—

Mr. LYON.—We can have the reporter copy them in the record, and then Mr. Acker at any time before the close of the testimony can make any objection to them he wants to.

Mr. ACKER.—If there is any objection to be made to them, it had better be made before they are read into the record.

The COURT.—Do you want to read the whole letters?

Mr. ACKER.—I object to them, any way, as immaterial, irrelevant and incompetent. [154]

Mr. LYON.—The first one is dated August 16, 1915. (Reading:)

“Porterville, Calif., Aug. 16, 1915.

Fred Stebler,

California Iron Works,
Riverside, California.

Dear Sir: I returned from the city Saturday

Evening. I managed to get the Board of the Packing House Co. together today so as to consider the matter of the New Equipment and the Bids on the same. I give herewith a copy of the resolution deciding the matter:

‘Moved by Brey and seconded by Orr that we authorize the Secretary and Manager—Mr. Milligan—to enter into a contract in proper form, with Mr. Geo. D. Parker of the Parker Machine Works of Riverside, Calif. for the installation of an equipment for our Packing Houses as outlined in the plans submitted and according to the specifications relating thereto and as a part of the same; and upon the terms quoted.’

This motion was unanimously adopted.

I am returning to you as per agreement the plans you furnished. I may say that the uncertainty as to the use of old material in your proposition did not commend it to the Board. And another thing with the equipment as per your plan is that there is not enough room to allow for a satisfactory system of sorting tables. Takes up too much room.

Mr. Parker is perfectly willing to give us the privilege to select any Sizer we may choose. We expect however to install [155] his new Sizer.

Truly Yours,

PORTERVILLE PACKING HOUSE CO.

JOHN A. MILLIGAN,

Secy.”

The second letter is dated November 1, 1915, and addressed to Fred Stebler. (Reading:)

"Dear Sir: Received a notice from you some days ago concerning the installation in our packing house of a dryer by Mr. Parker. In this you claim that this infringes on certain of your rights and that suit is to be filed against the same.

We also received today a notice from presumably your attorneys concerning suit to be begun against Parker in the matter of the new sizers, to which we are to be made a party, unless we dismantle and discontinue the use of these sizers. The time limit being set as Nov. 2, 1915.

We regret that you and Parker have so much trouble in keeping your interests separated to your mutual advantage. As packing house people we would be glad to help you both in any way we can. If there is no other way for you to settle your difficulties than fighting in the courts of course we can do nothing but look on as interested spectators. But as to our business matters in the using of the machinery available for the most advanced packing house equipment we are after the latest and the best. It is for us to require absolute protection against loss or interference in our packing operations which ever way these cases may be decided. If the goods [156] we have contracted for from Mr. Parker do not belong to him, or any part thereof are not his, we will expect him to meet all claims and clear the title to us or we will meet the claims ourselves and deduct the amount involved from his account.

As to the time limit of one day to obey the mandate of your attorneys we certainly have a right to look

(Testimony of Fred Stebler.)

upon it as not only a bluff but one of special variety. In the first place the only way to stop installation or use would be the securing of an injunction. In such case we would have a right to a hearing. It will not pay you to antagonize too much the packing-house people as they will not submit to being forced too much. I know you have lost out in this district and will lose out more as the result of your attitude toward us.

Hoping that these matters may all be adjusted satisfactorily to all concerned soon.

We are Truly Yours,

PORTERVILLE CITRUS ASSN.

JOHN A. MILLIGAN,

Secy. & Mgr."

The third letter is dated November 6, 1915, addressed to the same party at the same place. (Reading:)

"Dear Sir: Your favor received. After reading it over carefully with a view to become familiar with its import, the first thing I did was to look over my letter to you of date—Nov. 1st, to see what there was therein to occasion the venom of your reply. I have gone over it item by item and [157] tried to see each view point that might be taken. After doing so I cannot but assert that there is nothing in my letter to justify the views you have taken.

In the first place I want to reaffirm what I said in my letter referred to. In doing this it is necessary for me to refer to the several parts of the letter.

First. My acknowledgment of the receipt of the notice from your attorneys and also one from yourself, on a different matter was, I claim, in good form. I do not think that I was called upon to state to you the nature of the answer made thereto. You can get this from your lawyers. I submit therefore that my letter in this part was all right.

Second. With regard to the reference concerning who are to be made parties to the suit, that you claim we are in error about, my letter states the case as given in the notice, and we made no mistake, for we well understood that action would be brought against us. Your attorneys could not fail to see from our answer to their notice that we were cognizant of this fact. Your information therefore is no surprise. This has been your method heretofore and we knew we were still having to reckon with Mr. Stebler. I insist again that my report and answer was proper.

Third. The expressions of regret concerning the troubles between you and Mr. Parker which I offered, is perfectly legitimate. Why should we not regret these circumstances and so express ourselves. If I am to judge of [158] the sentiments of people from their voluntary expression of opinion, I think I can speak for many of the packing-house people when I say that we have reason to regret the fact that those who are in the manufacturing business cannot so harmonize their interests as to make it impossible for us to get the very best goods there are in the market, or that can be made

available for use without being threatened and bulldozed and placed at the risk of possible delay in our packing interests through litigation. It matters not to us whether we pay Parker or Stebler, or in addition to paying the cash value of the article, we have to pay a royalty to one or the other, providing we get what we wish and the article gives us the service. I repeat, therefore, that it is our business to go after the latest and best. If there arises trouble between those who are furnishing us equipment, or any part thereof, we certainly are willing to help toward any amicable adjustment if thereby we can secure the best by paying tribute to those whose claims demand it. I think I am right therefore in saying that we are interested spectators in any conflict of claims pending settlement in the courts. So there is no sarcasm in this part of my letter. The letter will bear analysis and there is nothing contained therein to justify you in the statement 'that we are appropriating something that does not belong to us.'

Fourth. In the matter of our requiring protection from those who install our equipment for us, to which my letter [159] refers as the clearing of title, this means just exactly what was intended and what you know I required of you and Mr. Stamm when you figured on our equipment, the same as in the case of Mr. Parker. This was a guarantee of protection against loss from litigation and expense of same as well as a guarantee on efficiency and material and workmanship. We think we had

the right to do this and we think we have the right to seriously doubt that any court will go so far as to say that the packing-houses will all of them henceforth use only the Stebler sizers.

We anticipated that there might be litigation and in such case, or any contingencies involved, we endeavored to protect ourselves. If the courts should decide that the new Parker sizer is an infringement on the Stebler and fixes an indemnity Parker will have to pay the same, or if the courts say that Parker's new sizer cannot be used then Parker will have to furnish us with two new sizers. And Mr. Parker was man enough to assure us that in such case he would furnish the Stebler sizers if we wished them. Therefore I again insist that my letter was fair enough in stating the case. And we are doing you no wrong.

Fifth. On the matter of the one day limit which might at first seem to justify you in your criticism of my apparent forgetfulness, I want to say that my characterization of it as a special variety of bluff is no misnomer. You must have known and your attorneys should have known that the sizers were not in use but in process of being installed and to [160] dismantle the same in the time specified was an impossibility. If it was not a bluff, therefore, any other term used might have reflected on the intelligence of those who designed the requirement. I used the word bluff because you had used it in your letter to me. If we had been frightened into an attempted compliance with the demand it

certainly would have been a bluff all right.

You speak as if we did not take the notice seriously. We did take it seriously and made answer without changing our opinion as to character of the one day notice. As to former notices you gave, they were in the form of warnings from your view point and from ours they were considered as threats, but in neither case did they prove anything as to whether the new sizer of Parker was an infringement of your rights and that is the one question that has to be settled and in which we are interested.

Sixth. My suggestion in the words: It will not pay you to antagonize too much the packing house people as they will not submit to being forced' is evidently misinterpreted by you. This was intended as a friendly word and as such I repeat it with the additional emphasis that is given in the light of your letter. You have a perfect right to the use of your patents and protection against infringement by any one. This fact we have recognized in our requirements from Mr. Parker. We, however, recognize our own rights of choice in selecting what we thought was best for us, considered in [161] relation to our needs. If what we have selected belongs to you instead of Mr. Parker, as you claim, then we are interested in having the courts decide this, and in such a case, as we have already intimated, Mr. Parker will have to recognize your rights and protect us. There is nothing wrong about this as far as I can see and we are not worry-

ing over the pending trial. Go ahead, we are interested spectators even though we may be dragged into court because we are the innocent purchasers of goods over which you and Parker are fighting. We are not afraid of any action in the courts against us because we have refused to be influenced by your system of bulldozing. We have not stolen anything nor in any way taken advantage of any one and your abuse of us in your letter cannot injure us but it certainly puts you in a very unenviable light. There is no need of this. You are in business and we will doubtless need many of the supplies you only can furnish. But that is no reason why we should not select the goods of others if they suit us better. If these goods cannot be delivered to us owing to you having strings on them then it is up to the parties who propose to furnish these goods to look after the strings.

Your letter of July 27th last and also one of Aug. 17th as well as conversations with me in this office—all of these before the contract was let, were calculated to impress on one the feeling that you were using pressure to force us to the putting in of your machinery, exclusively, [162] or the machinery in which you were interested. I do claim that this policy creates antagonism. Not to do you injury in any positive way but to as far as possible have no business dealings. Despite this, if your equipment had been best suited to our needs and to fit in to the space available and the price had been right we would probably have given you the con-

tract. It was not prejudice or malice as you insinuate, but facts and figures that lost you the contract with us. Again I say, go ahead and have the matter decided legally as to whether the new sizer by Parker is an infringement on your rights. We are interested in having this done and in this attitude we are as much your friends as we are Mr. Parker's friends.

Now as to the charges you make against me personally I will say this that you are absolutely mistaken and have no warrant for the conclusions to which you come as expressed in your letter. A letter which if you had taken time to think over and realize its character you probably would not have written it. You imagine that I have done you an injury, but if the future teaches us anything it is more likely to teach you the folly of trying to force people to do business with you in an undue manner than it will teach us not to cross the path of Fred Stebler. I have not injured you in any way. You have been injuring yourself and are likely to do yourself more injury in the future, if this letter is a sample of what you give those who for whatever reason fail to give you their [163] business.

If you had been as willing as Parker was to install for us any machinery we might select that was adapted to our needs and that was possible in relation to our floor space and had the price been satisfactory you would have had as good a chance as Parker to get the contract. I certainly could have

done a great deal more for you under those circumstances.

I can assure you that as far as I am concerned, there will be nothing put in the way of your doing all the business in this district in the future that is possible. I expect to do business with you myself. We need your goods and are not prejudiced against them particularly. They have been so far the best we could get. But if there is any better available do not blame us for trying to get that. The new sizer of Parker's gives promise of being much better. This of course has to be proven by actual use. It seems to be a wholly different proposition from yours and for particular use is much the more desirable, if it proves a success. If he infringes on your rights in its construction that is for you and he to decide. Or rather for the courts to settle. If this sizer is a success and we cannot get it from Parker because it is yours then we will want it from you. Will the courts sustain you in the position that we cannot have the machine we want?

As far as I am concerned, if any machine is invented [164] or any improvement is added to any machine that will be of advantage to the industry with which I am connected I will hold myself free to promote it whoever may be the inventor. Of course always with due regard for the rights of others. You and I certainly can remain as friends on these terms and neither of us need worry over trying to run either 'The territory of Tulare Co. or the universe.' Nor will there be any danger

of your going to the 'almshouse' because of 'incompetency' or me going to the penitentiary because I have 'wilfully and maliciously appropriated without regard to equity the property of another.' "

Trusting sincerely that the pending litigation may soon clearly define your rights and those of Mr. Parker in relation to the new sizer,—which by the way is a dandy as far as appearances go—so that in case it proves a success we may continue the use of it. Three sizers are adapted to our house whereas yours are not.

I think you and I can afford to be friends and both of us be men.

Truly yours,

PORTERVILLE CITRUS ASSN.,

JOHN A. MILLIGAN,

Secy. & Mgr. [165]

Mr. LYON.—Now, of course, there is a great deal in all three of those letters which is not absolutely pertinent to the issues of this case, but they do show the willful character of this infringement; in the first place, they show the absolute notice at all times that the defendants have had of the rights of Mr. Stebler, and they show the very fact that the real defendant and the man who is conducting this defense here has contracted that he will in some manner even secure the Stebler sizers in case the court holds these devices are infringing, and it seems to me these letters characterize the character of the acts of the defendants herein, and are material to prove not only notice, but prove that they

(Testimony of Fred Stebler.)

went ahead and invited the contest, and for that reason they are offered in evidence, and for all purposes for which they are competent, and they cannot be said to be entirely incompetent, irrelevant or immaterial, which is the objection.

The COURT.—Do you desire to be heard, Mr. Acker?

Mr. ACKER.—No reply.

The COURT.—It seems to me like the letters are material. The objection will be overruled.

Q. (By Mr. LYON.) In the year 1910, Mr. Stebler—

The COURT.—He spoke of the wilfulness. Is that a material issue in that case?

Mr. LYON.—Yes; that goes to the question of damages.

Mr. ACKER.—Not at all on the hearing of the question [166] of the issues of infringement; that is a matter of accounting, if it should be an infringement. The question we are called upon to decide now is whether this machine, being used by these defendants' constitutes an infringement of the patents; that is the sole issue at this time.

Mr. LYON.—We have shown the court that it is in wilful disregard of the patent, and if you find that the patent is valid and the patent is infringed, then your decree may order treble damages, and that question of whether you hear all those questions is within the discretion of the Court, whether you will order treble damages by the interlocutory decree, or afterwards, and all of these facts are cer-

(Testimony of Fred Stebler.)

tainly material on the question of the knowledge and the character of the actions of the defendant.

Mr. ACKER.—The question of damage is a matter that comes up on the final decree, after the interlocutory decree, and on the accounting.

The COURT.—Read what Mr. Acker said.

(Last statement of Mr. Acker read by the reporter.)

The COURT.—Well, proceed, Mr. Lyon.

Q. (By Mr. LYON.) In the year 1910 you were acquainted with the H. K. Miller Manufacturing Company, were you, Mr. Stebler?

A. Yes, sir.

Q. That company supplied certain graders and distributing systems to the Pioneer Fruit Company at Lindsey, did it? A. Yes, sir. [167]

Q. And a suit No. 207 in the Northern Division of this court was brought by you? A. Yes, sir.

Q. On this Robert Strain Reissue Patent, Plaintiff's Exhibit 1, and the Stebler Distributing Patent, Plaintiff's Exhibit 2. A. Yes, sir.

Q. That case was tried before his Honor, Judge Wellborn? A. Yes, sir.

Q. And a judgment rendered that both patents were valid and infringed? A. Yes, sir.

Mr. LYON.—We offer in evidence the judgment-roll in that case, so that—

Mr. ACKER.—Objected to as immaterial, irrelevant and incompetent.

The COURT.—Overruled.

(Testimony of Fred Stebler.)

Mr. ACKER.—Not embodying any issues of the present controversy.

The COURT.—I will overrule the objection.

Mr. ACKER.—Exception.

Q. (By Mr. LYON.) Subsequent to that judgment, did you settle with the Porterville Citrus Association for the use of any of the type of machines that were covered by that judgment? [168]

A. I did.

Q. What machines?

A. Machines that they were using in their Plano house.

Q. And they took a license for the two or three machines that the Porterville Citrus Association was using in their Plano house?

A. Well, since I come to think about it, I think there was another house involved in that, which was the Boydston house, which was also involved in that settlement.

Q. And they paid \$188.50 damages on each machine? A. Yes, sir.

Q. And in that contract they agreed to the validity of both the Stebler Distributing Apparatus Patent, Plaintiff's Exhibit No. 2, and the Strain Reissue Patent, Plaintiff's Exhibit No. 1, claims 1 and 10?

A. I believe so.

Q. And agreed at no time to further infringe?

A. I believe that was part of the basis of the settlement.

Q. Since the date of the issuance of Plaintiff's Exhibit No. 2, the Stebler Distributing Apparatus Pat-

(Testimony of Fred Stebler.)

ent, to what extent, if at all, have the rights of that patent been respected and recognized by the trade and public, or contested by them?

A. Well, they have not been contested except in the case of this Pioneer Fruit Company and this case at issue here.

Q. To what extent have you sold and manufactured distributing [169] apparatus in accordance with it?

A. We have had a very extensive and growing business ever since this machine came out.

The COURT.—That wouldn't mean anything.

Q. (By Mr. LYON.) Well, you say extensive and growing. What proportion of the machines that have been installed have been equipped with that distributing apparatus?

A. Practically all of them.

Mr. LYON.—You may inquire, Mr. Acker.

Mr. ACKER.—Let me have those photographs.

The COURT.—These photographs you have put up here are not marked.

Mr. LYON.—That is a set I provided simply for your convenience. I will have them marked.

The COURT.—It is not necessary to mark them, then, if you have got them correspondingly marked.

Cross-examination.

(By Mr. ACKER.)

Q. Mr. Stebler, you have testified as to certain photographs which have been marked and introduced in evidence as Complainant's Exhibits 4, 5, 6 and 7. When were these photographs taken?

(Testimony of Fred Stebler.)

A. I think some time last November.

Q. That was prior to your first inspection of the packing-house of the Porterville Citrus Association?
[170]

A. Yes, sir.

Q. Were they taken by you? A. No, sir.

Q. I call your attention more particularly to the photograph which has been marked Plaintiff's Exhibit No. 5, and to the forward end portion of said photograph, the left-hand side, and direct your attention to what appears to be some strips arranged transversely of the conveyor belt, and at an inclination. What are those strips and what do they represent?

The COURT.—You mean those—

Mr. ACKER.—Bars.

A. They appear to be guide sticks on the distributing belts.

Q. Did you ever see the machine in operation with those so-called guide sticks arranged in any such manner?

The COURT.—You mean those in the form of a triangle?

Mr. ACKER.—Yes, your Honor.

The COURT.—All right. I know what you are talking about now.

The WITNESS.—I don't recall that I have seen it in operation set at that angle, no.

Q. (By Mr. ACKER.) Then you were incorrect in your testimony when you stated that photograph Exhibit 5 represented the machine as you saw it in

(Testimony of Fred Stebler.)

the course of your inspection; is that correct? [171]

A. I wasn't speaking of that part of the machine. I was speaking of the grader at that time.

Q. The grader. What do you term the grader in the said photographs?

A. The sizing apparatus, or the grading apparatus.

Q. Do you mean that portion which extends from the feed end of the machine to the discharge end, and which has a rotating wall member, appearing immediately above the carrier, is that the grader?

A. That is part of the grader; yes, sir.

Q. What constitutes the grader in this device, Mr. Stebler?

A. The wall member, the roller or wall member as you speak of, and the traveling conveyor.

Q. Those two members, they constitute the grader?

A. They constitute the grade-way.

Q. What is the grader?

A. The grader is made up of that portion, with this other added paraphernalia. For instance, its mountings for the roller and the support for the belt, and so on.

Q. And in the device of the Porterville Citrus Association and the Mid-California Citrus Association, the defendants herein, does the roller member consist of a series of connected sections which are driven in unison from power applied from one end of the machine? A. Apparently so. [172]

Q. Is that or is it not a fact?

A. Apparently so; I didn't examine it minutely, and I didn't take it apart, but that appears to be the construction.

(Testimony of Fred Stebler.)

Q. Your examination of the machine was sufficient to enable you, one skilled in the art, to state whether it rotates in unison?

A. That was my impression.

Q. Well, do you not know, as a matter of fact, that is so, Mr. Stebler? A. No, sir; I do not.

Q. Then your knowledge is not sufficient to enable you to answer the question?

A. I consider that I have answered the question.

Q. In the device represented by the letters patent Complainant's Exhibit 1, which is the Robert Strain patent, Re-issue Patent No. 12,297—

The COURT.—Now, let us see. Wait a minute.

Mr. ACKER.—That is the first patent.

Q. Exhibit 1 is the Thomas Strain?

Mr. ACKER.—That is the Robert Strain.

The COURT.—All right; that is Exhibit 1.

Q. (By Mr. ACKER, Continuing.) The fruit runway consists of a traveling rope and a series of opposing independently mounted rollers. Is that not a fact? A. That is a fact. [173]

The COURT.—What are you reading from?

Mr. ACKER.—I am just calling his attention to the patent.

Q. The device of this patent, and that held true regarding the model of the Parker device which was introduced in evidence in case No. 2232, held to be an infringement, is it not? A. Yes, sir.

Q. Now, in the Parker device which was held to be an infringement, each roller of this series of longitudinally disposed rollers was independently ad-

(Testimony of Fred Stebler.)

justable toward and from the traveling belt; is that not so? A. That is so.

Q. And that is true as to the devices of the Strain Reissue Patent No. 12,297, is it not? A. Yes, sir.

The COURT.—What is the Strain Re-Issue—

Mr. ACKER.—Plaintiff's Exhibit No. 1.

The COURT.—Yes. If you call them Exhibit 1, and so forth, it will help out, I think.

Mr. ACKER.—All right, your Honor, I will do that.

Q. Now, the rollers of the device held to be an infringement in suit 2232 of the Complainant's Patent Exhibit 1 were not connected one to the other to rotate in unison; is that correct?

A. Just give me that again. [174]

(Last question read by the reporter.)

A. That suit 2232, I take it to mean this model we have before us, and that being the case, of course, the rollers are not connected or rotate in unison.

The COURT.—Read me that answer.

(Last answer read by the reporter.)

Q. (By Mr. ACKER.) And the rollers in the said models are mounted for adjustment and for rotation in the same manner as the rollers of the Strain Reissue Patent, Plaintiff's Exhibit No. 1; is that correct?

A. Well, I wouldn't say they are mounted in exactly the same manner, but similar.

Q. Substantially the same?

A. Substantially the same, you might say, yes.

Q. And to all intents and purposes now in the de-

(Testimony of Fred Stebler.)

vice of the defendants at present in controversy, the rotary wall member consists of a single rotating structure; that is, a structure rotated in unison by power applied to one end in contra-distinction to a rotary wall member composed of a series of independently mounted and independently rotary rollers; is that not correct? A. I think so.

Q. (By the COURT.) How do these things rotate in this model?

Mr. ACKER.—In this model, if your Honor please, the rollers are rotated by the frictional contact with the fruit. [175]

The COURT.—That is what I thought. Now, this machine is rotated by power?

Mr. ACKER.—This machine we have now, instead of having a series of rollers mounted independently, or guides or brackets, so they could be adjusted up and down, we have one roller.

The COURT.—That one roller is operated by power at the end?

Mr. ACKER.—At the feed end.

The COURT.—At the feed end. All right.

Mr. ACKER.—And rotate in unison there and is what we term a continuous roller.

Q. Did you have charge at any time of other machines installed by Mr. Parker for the defendants to the present suit?

A. No; I haven't charge of those.

Q. Well, did you at any time operate those machines during the run for the sizing of oranges?

A. I did not personally operate it; I saw them

(Testimony of Fred Stebler.)

operated, if that is what you mean.

Q. And when was that?

A. When we were there in December.

Q. When we made the trip to Porterville with his Honor, Judge Trippet? A. Yes, sir.

Q. And at that time the machines were not in operation? [176]

A. They were in the Mid-California house.

Q. Yes; but not in the Porterville house?

A. They started and operated them for us, of course.

Q. Can you state the approximate length of the grader employed by the defendants?

A. By "grader" I suppose you mean that grade-way, the portion of the machine that constitutes the gradeway.

Q. I mean the length of the grader, the entire grader.

A. Well, only approximately; I have never measured them, and I should judge they are in the neighborhood of 35 or 40 feet long.

Q. And what is the length of the bins relative to the grader?

A. I should judge about three feet longer than the grader.

The COURT.—That is the alleged infringing device we are speaking about now?

Mr. ACKER.—This is the infringing device I am speaking about now.

The COURT.—The whole length of the grader would be measured by the length of the belt?

(Testimony of Fred Stebler.)

Mr. ACKER.—The whole length of the grader would be measured by the point where the fruit enters into the fruit runway until it leaves it; that is the grader.

Mr. LYON.—To the end of the runway would be the length of the grader. [177]

The COURT.—Well, I wanted to know. Do you call the grader going to the end of those rollers or the end of the belt where the fruit would finally fall off?

Mr. ACKER.—From the bearing of the rotating wall member to the opposite bearing.

The COURT.—That would be the width of it, wouldn't it?

Mr. ACKER.—No, sir; the length, if your Honor please.

Mr. LYON.—We disagree with him.

The COURT.—That would be from one end of the roller to the other? (Indicating on patent.)

Mr. ACKER.—Here. (Indicating.)

The COURT.—That is what you are asking about now?

Mr. ACKER.—Yes; but if your Honor please, the rotating member goes beyond about two or three feet, and that constitutes a part of this grader.

Mr. LYON.—Well, we don't agree to that.

The COURT.—Show me what you are talking about in this picture now.

Mr. ACKER.—Take Exhibit No. 4, that part here (indicating). Now, that constitutes a portion.

The COURT.—This here? (Indicating.)

(Testimony of Fred Stebler.)

Mr. ACKER.—Yes, sir.

The COURT.—And you are asking him now about this. The witness may not understand you.

Mr. ACKER.—That is a part of this rotating number. [178]

Mr. LYON.—We don't agree, your Honor, on that particular phase.

The COURT.—All right.

Q. (By Mr. ACKER.) Now, is it not a fact, Mr. Stebler, that in the defendants' machine the bins are coextensive in length with the length of the rotating wall member of the grader, and considering this portion here as a portion of the rotating wall member?

A. I shouldn't consider it so.

Q. You say it does not?

A. I should not consider it so.

Q. That is, you don't consider the bins are the same in length? A. No, sir.

Q. Now, in the grader of Defendants' Exhibit No. 2, which is the Stebler Patent No. 943,798, how does the length of the bins compare with the length of the grader? A. They are longer in that case.

Q. How much longer?

A. Oh, anywhere from five to fifteen feet.

Q. Well, what is the usual length, about fifteen feet?

The COURT.—This patent in this case requires the bins to be longer?

Mr. ACKER.—Yes; your Honor, that is the sole point in this patent, as we will show when we come to the defendant's proof. [179]

(Testimony of Fred Stebler.)

Mr. LYON.—That is one feature.

Mr. ACKER.—That is the only feature in that patent, according to the history in the Patent Office, as we will come to later.

Q. In the device disclosed by Complainant's Exhibit No. 2, the grader is a comparatively short grader, is it not?

A. Well, you might consider it so. I don't know as I should; we make a practice of making the grader shorter than the bins; no established rule in regard to that.

Q. What is the usual length and proportion of the grader relative to the length of the bins as installed by you, Mr. Stebler?

A. Well, with us, I suppose the most common difference in length there would be the bins probably 10 feet longer than the grader, or 12 feet.

Q. And how many grades or sizes of fruit are taken care of by the bins which are extended beyond the length of the grader member?

Q. (By the COURT.) Does that make any difference? The different size of the fruit and the length of the bin?

A. Why, yes; we vary the length of those bins; we find it desirable and sometimes quite necessary to vary the length of the bins, to change them.

Q. Well, the longer the bins are, do you get the greater number of sizes by reason of having the bins longer? [180]

A. Well, it is not so much that; we have a fixed number of sizes.

(Testimony of Fred Stebler.)

Q. Well, answer my question. Would that make a difference?

A. The difference comes in probably a little greater flexibility, possibly; not perhaps so much the greater number of sizes but greater room for the given sizes.

The COURT.—Proceed, Mr. Acker.

Q. (By Mr. ACKER.) My question was about how many bins were projected or extended beyond the discharge end of the grader?

A. Well, due to the fact that those partition boards are movable, there might be three or there might be four; there might be one or there might be two.

Q. As installed and used?

A. Well, it is installed and used with those partitions movable; each man places them where he wishes.

Q. And in the said devices, what is there that guides and directs the sized fruit from the grading member to those bins which are situated at a point removed from the end of the grader?

A. The belt and the guides thereon.

Q. By the guides, do you mean chutes?

A. Well, you might call them chutes; they are simply sticks, is all they are.

Q. Well, in your patent you term them chutes, do you not? A. Possibly. [181]

Q. And they constitute run-ways, do they not?

A. Yes, sir.

Q. And in those run-ways the fruit is carried or guided from the grader into the fruit receiving bins; is that not a fact? A. Yes, sir.

(Testimony of Fred Stebler.)

Q. And in conjunction with those chutes you employ a traveling belt for guiding the fruit relative to the sizes; is that not a fact?

A. Not so much guiding; simply belts for conveying.

Q. Well, the belt conveys the fruit against the wall surface of the inclined chutes, does it not?

A. No, sir; there is where you are mistaken.

Q. It does not? What does it do?

A. It carries it—the belt conveyor—is the carrier—is the conveyor.

Q. Well, the belt is arranged to travel longitudinally and parallel of the fruit grader, is it not?

A. Yes, sir.

Q. And these chutes are arranged transverse of the longitudinal traveling belt, and at an incline, are they not?

Q. Well, I don't know as I understand your terms; at least, I wouldn't use them that way. They are not exactly transverse; they are at an angle, of course, to the line of travel of the belt. [182]

Q. They are arranged at a transverse inclination to the travel of the belt?

A. Possibly that would express it.

Q. And they extend from the grading member to the bins or bin in which the fruit is to be received; is that not a fact? A. Yes, sir.

Q. Now, what would happen in your machines if all of the guide chutes were removed?

A. The fruit would mix.

Q. How? A. The fruit would mix, probably.

(Testimony of Fred Stebler.)

Q. Then you would not preserve the integrity of the sized fruit; is that correct?

A. Not with our present construction and the present adjustment of the bins.

Q. And so it is necessary that you use these chutes arranged at a transverse inclination to the longitudinally traveling belt in order to maintain the integrity of the sized fruit; is that right?

A. With our present method of construction.
[183]

Q. (By the COURT.) What do you mean by "present method of construction"?

A. Well, we have—I should say, the length of these bins varies in relation to the length of the grader, and there are instances where the distributing system was not much longer than the grader, in which event there was not much transverse motion to the guide-ways. In other words, the fruit run almost straight across the belt and dropped down in, except in cases of radical adjustment of the bins, or something like that.

Q. (By Mr. ACKER.) By your present construction, Mr. Stebler, you mean the construction which is illustrated and described in your letters patent Complainant's Exhibit Number 2?

A. That shows it, yes.

Q. And that is the construction you have reference to?

Q. (By the COURT.) Well, now, do you claim that you can construct this grader in a different man-

(Testimony of Fred Stebler.)

ner and comply with your patent, and let the fruit run off practically diagonally—I mean, practically at right angles with the rollers? A. Yes, sir.

Q. (By *the* ACKER.) And the fruit is delivered into the bins without the use of these guide chutes?

A. No; I didn't mean to say without the use of the guide chutes.

Q. You have to then employ the guide chutes in order to preserve the integrity of the sized fruit from its line [184] of travel from the grader into the bins?

A. When you vary the location of the bins you do; yes.

Q. And that is the purpose of those chutes?

A. Yes, sir.

Q. In your cross-examination you referred to a device which has been manufactured and sold by the Miller Manufacturing Company. That was not the device which is used by the defendants in the present action, was it?

A. Well, I don't recall referring to any devices manufactured by the Miller Manufacturing Company.

Q. Pardon me?

A. I don't recall referring to any devices manufactured by the Miller Manufacturing Company in my direct examination.

Q. Wasn't your attention directed to a suit which you had brought against the Miller Manufacturing Company? A. No, sir.

(Testimony of Fred Stebler.)

Q. What was the name of that company?

A. The Pioneer Fruit Company.

Q. That was the machine manufactured by Mr. Miller, was it not? A. I believe so.

Q. So you understood what I meant by my question, did you not?

A. I probably did, yet I couldn't answer that way.

Q. That device was a device, was it not, wherein the fruit runway consisted of two parallel members, one member [185] being a traveling member and the other being a rotary member, composed of a series of independently adjustable rollers?

A. Yes, sir.

Q. Very similar to the device which was held to be an infringement, and which had been manufactured and sold by Mr. Parker, is that correct?

A. Yes, sir.

Q. I understood you to testify that you had installed, and did install the first machine conforming to the device of Complainant's Exhibit Number 2, during the latter portion of the year 1907. Were any changes made in that machine after its installation? A. I don't think there were.

Q. Did you not shortly afterwards change the construction of that machine so that the smaller fruit was then discharged in a different position from which the fruit was discharged as originally installed? A. No, sir.

Q. And carried to bins situated at a different point? A. No, sir.

(Testimony of Fred Stebler.)

Q. The grader was not reversed? A. No, sir.

Q. And you are positive as to that?

A. Yes, sir.

Q. Where was that first machine installed? [186]

A. At Upland.

Q. What is the house?

A. The Mountain View Orange & Lemon Growers Association.

Q. You are positive that machine was not changed or altered so that the bins for the small sized fruit were projected beyond the feed end of the grader?

A. Not unless done within the last two or three months.

Q. Did you have any knowledge of fruit sizing and distributing apparatus prior to the year 1907, wherein the sized fruit was conveyed from the grader by means of downwardly transversely inclined chutes and the fruit from said chutes received into bins, the partitions of which were longitudinally adjustable?

Mr. LYON.—Just a minute. That is objected to as not cross-examination, and an obvious attempt to go into the defense of the case under the guise of cross-examination. The witness' testimony on direct has been limited to 1910, and if counsel desires to prove the prior state of the art, he must do so by his own witnesses.

Mr. ACKER.—This witness was placed on the stand as an expert in this art, and as an expert in this art I have a perfect right to inquire into his

(Testimony of Fred Stebler.)

knowledge of the art as it existed prior to the advent of the Stebler patent in suit.

The COURT.—It is kind of hard for me to determine whether this is cross-examination, or not.
[187]

Mr. ACKER.—There is great latitude permitted in any cross-examination of a witness.

The COURT.—Well, I know.

Mr. ACKER.—But when the witness appears as an expert in an art, as this witness has in reply to one of my objections, it was urged that he was an expert; I have a right to inquire into his expert knowledge.

The COURT.—Of course, if I knew the materiality of it it might throw a different light on it. You are asking now about his knowledge of the construction of the machine prior to the invention of this Exhibit 2 machine?

Mr. ACKER.—Yes, sir.

The COURT.—Cross-examination must be material and relevant to the issue.

Mr. ACKER.—It is certainly material to the issue as to whether or not distributing bins were formerly known to him as an expert, wherein the partitions were longitudinally adjustable to vary the size of the bins.

The COURT.—Mr. Acker, you withdraw that question and ask him smaller questions and shorter. It is hard for me to carry that long question, anyhow.

(Testimony of Fred Stebler.)

Mr. ACKER.—I will arrange it on my own.

The COURT.—Sir?

Mr. ACKER.—If the witness is unable to answer it, I will take care of that on my own case.

Referring to figure 1 of the drawings of Complainant's [188] Exhibit 2, the same being the Stebler patent, how many of the fruit receiving bins are illustrated therein as being extended beyond the fruit grader? A. Four.

Q. And the means illustrated for conveying the fruit from the grading elements to the bins consists of the transversely downwardly inclined guides 12 and 13,—marked by the reference numbers 12 and 13? A. Together with the belt; yes.

Q. Now, each guide strip of the strips forming the chutes is provided with a telescope end section, is it not? A. Yes, sir.

Q. And by means of that telescope end section you are enabled to lengthen out each guide strip, is that correct? A. That is a fact.

Q. And used for that purpose?

The COURT.—Is that part of this patent, exhibit 2?

Mr. ACKER.—Yes, sir.

Mr. LYON.—What was the question, Mr. Reporter?

(Last question read by the reporter.)

The COURT.—Is that telescopic feature part of exhibit 2 patent?

Mr. LYON.—Yes; it is a part of the patent, but all

(Testimony of Fred Stebler.)

claims are not limited to that feature; that is one of the features of the invention, but it is not included in any of the claims which we stand on in this case.

[189]

The COURT.—It is not involved in this suit?

Mr. LYON.—No.

Mr. ACKER.—What do you mean, it is not involved in this suit?

The COURT.—This telescopic feature of this thing is not involved in this suit.

Mr. ACKER.—I think, your Honor, before we finish with this case, it is involved in this suit, quite materially so, and it is a material part of the patent.

The COURT.—Well, I suppose that complainant in bringing this suit specified the claims of the patent on which he relies. It seems to me that it is a novel thing that the defendant raises an issue that plaintiff did not tender.

Mr. ACKER.—Well, if your Honor please, those are chutes.

The COURT.—Sir?

Mr. ACKER.—They are peculiar chutes in this patent, and the chutes form a portion of the claims.

The COURT.—All right; go ahead. We will see.

Q. (By Mr. ACKER.) You are the owner, I understand, Mr. Stebler, of the device covered by Complainant's Exhibit Number 3, the same being the Tom Strain patent? A. Yes, sir.

Q. Do you know whether a device was ever installed under the Tom Strain patent? A. Yes, sir.

(Testimony of Fred Stebler.)

Q. When and where? [190]

A. I don't know as I can tell you just when it was installed, but I saw it in use down at Tom Strain's packing-house at Fullerton some years ago.

Q. And how was that machine constructed?

A. Substantially as shown in the patent.

Q. Substantially as shown in the patent?

A. Yes.

Q. What means did it have for varying the grade outlets for the escape of the sized fruit?

A. It had both the adjustment of the rotating member and the adjustment for the opposing traveling belt.

Q. Well, you mean it had means for adjusting the belt from below? A. Yes, sir.

Q. And you are positive of that? A. Yes, sir.

Q. Examined it carefully?

The COURT.—Adjusting the belt below like this Porterville machine?

Mr. ACKER.—Yes, your Honor.

The COURT.—Pushing the belt up?

Mr. LYON.—Just a moment. If your Honor will pardon the interruption, if you will turn to figure 9. (Exhibiting patent to the Court and explaining the same.)

Q. (By Mr. ACKER.) And you are positive that means were incorporated in that machine for adjusting the belt from the [191] bottom?

A. Well, I recall that when Mr. Strain—Thomas

(Testimony of Fred Stebler.)

Strain himself showed me that machine he pointed that feature out to me.

Q. Mr. Thomas Strain, that is the Strain, the patentee of the letters patent? A. Yes, sir.

Q. Pointed out to you the adjusting means for raising and lowering the belt from underneath?

A. Yes, sir.

Q. And you examined it?

A. No; I didn't examine it minutely to corroborate him; I understood then he said he had this thing. I saw the boards were cut in two in sections, and of course I was not concerned enough about it then to get in and see whether what he was telling me was actually there.

Q. Then, as I understand from your testimony, you have no positive knowledge on that subject either one way or the other?

A. Nothing except what he told me himself.

Mr. ACKER.—I object to that as being merely hearsay evidence.

Q. If you have any knowledge on that subject, just state it, but I don't care to have you tell what Mr. Strain told you. My question is, do you, of your own knowledge, know what means were provided in that device, as installed, for [192] adjusting the belt from underneath?

A. The evidence was there, as far as I could see, without getting under the machine. I saw these leaves in sections. I didn't get under the machine to see whether there were means there for raising and lowering it.

(Testimony of Fred Stebler.)

Q. (By the COURT.) In the patent, exhibit 3, figure 9, number 16, is that supposed to be the thing that raised and lowered the—adjusted the belt?

A. Yes, sir.

The COURT.—Well, go ahead, Mr. Acker; excuse me.

Mr. ACKER.—That is all, Mr. Lyon.

Redirect Examination.

(By Mr. LYON.)

Q. What became of this Thomas Strain machine like Plaintiff's Exhibit 3; do you know, Mr. Stebler?

A. It was dismantled and put out of use.

Q. Do you know whether it was successful while it was in use?

A. Why, it appeared to be; he used it, I think, for two seasons.

Q. Do you know the circumstances under which it was dismantled?

A. Well, yes; about that time I successfully prosecuted a suit against certain other parties for the use of the adjustable roller, and on the successful termination of that [193] suit I went to Mr. Strain and told him I thought his machine was also an infringement, and asked if he would discontinue the use of it, or settle with me for it on the same basis that we settled the other, and I think that there was some correspondence passed both between myself and him in regard to it, and he finally discontinued the use of the machine, I think, practically on that account.

(Testimony of Fred Stebler.)

Q. Now, you have stated that in the suit number 2232 involving the Parker patent type of grader like the model which is here in the courtroom, the rollers in that are not power-driven. Referring to the so-called modified form of Parker machines which were considered by the Master, Lynn Helm, and whose report was affirmed by Judge Bledsoe, how were the rollers in those two types of modified machines arranged with respect to being driven?

A. They were power-driven in unison.

Q. Power-driven in unison, in substantially the same manner as the Porterville Citrus Association machine? A. Yes, sir.

Mr. LYON.—I think that is all right now.

Recross-examination.

(By Mr. ACKER.)

Q. In that modified type of the Parker machine which was held to be an infringement, how was the adjustment for varying the grade outlets of the fruit runway accomplished?

A. It was accomplished by varying the distance between [194] the roller and its opposing traveling conveyor.

Q. (By the COURT.) I can't understand you very well.

A. It was accomplished by varying the distance between the roller and the opposing traveling conveyor.

Q. (By Mr. ACKER.) Well, can't you be a little more explicit for the benefit of the Court and explain

(Testimony of Fred Stebler.)

exactly how that was produced?

A. It was accomplished by adjusting the roller.

Q. That is, the roller was adjusted toward and from the traveling belt? A. Yes, sir.

Q. And by that you mean you varied the distance between the belt and the roller for making the change for the different size fruit? A. Yes, sir.

Q. And in the same manner as the rolls are adjusted in the model of case number 2232, that the rollers were adjusted toward and from the belt?

A. I shouldn't say in the same manner; the same process, you might say.

Q. (By the COURT.) What is there, a hinged joint between the spaces?

A. The rollers were connected with a flexible joint, yes.

Q. Now, on this machine here at Porterville where these arms were brought over and connected with the roller *to that* roller down, where the roller goes in here, is there a [195] hinge in here?

A. There is a simple flexible joint, as I understand it.

Q. You don't know about that?

A. As I said awhile ago on my direct examination, I didn't have the machine apart enough to explain definitely how they are constructed, but from what I could learn I assume it is a similar construction from what we had in these modified machines I was speaking about in the Riverside Heights Orange Growers Association.

(Testimony of Fred Stebler.)

Q. In order to adjust the roller there seems to be some sort of a joint?

A. It is just a short piece of square-shaped journaled in an end casting, which is fastened to each end of these rollers in such a fashion that would make it work.

The COURT.—That is what I would call a joint.

Mr. ACKER.—That is in the modified machine we referred to, and the Court held to be an infringement, the two rollers were connected with a flexible joint connection.

The COURT.—In this machine here, it seems to me there seems to be a bending of that shaft some place along here where it is fastened by these elbows.

Mr. ACKER.—It rotates in its bearings the same as any other shaft.

The COURT.—Then it must be in a straight line.

Mr. ACKER.—It is, substantially.

The COURT.—You claim this machine is in a straight line— [196] this shaft?

Mr. ACKER.—Yes; substantially a straight line; as I understand it.

Mr. LYON.—No; there is a universal joint end there.

Mr. ACKER.—Excuse me, there is not. Show it. It is in substantially a straight line.

The COURT.—If it was not in a straight line—

Mr. ACKER.—There is no torsion to it, if you mean that; there is no eccentric turn to it.

The COURT.—Well, it would flop—I don't know how to express it—if it were not turned straight this

(Testimony of Fred Stebler.)

way. If there was a bend in it. Suppose there was a bend in that pencil (indicating), then it would be turning around that way, and it wouldn't turn true.

Mr. ACKER.—This turns true.

The COURT.—That is what I want to know. You claim in this device it turns true all the way through.

Mr. ACKER.—Yes, your Honor.

Mr. LYON.—Are you through?

Mr. ACKER.—I am through.

Redirect Examination.

(By Mr. LYON.)

Q. Again referring to the so-called modified Parker machines considered in the accounting in case 1562, was the adjustment of the roller sections toward and away from the belt in those machines effected by moving the whole roller, [197] or just one end of the roller?

A. Well, the adjustment, of course, was what I suppose you term the end of the roller; that is, at this flexible joint, so when we adjusted the roller at this joint, it moved the ends of the two adjacent rollers to and from the belt, but those ends only, and of course, that diminished as it went to the other end.

Q. Now, one form of those modified graders had a cone-shaped roller, so that it was the small end of the roller which formed the particular outlet to be adjusted and the big end next to it the adjustment wouldn't affect? A. Yes, sir.

Q. And the other form had a straight roller with pieces of wood or filler sticks blocking out the non-

(Testimony of Fred Stebler.)

operative end, did they? A. Yes, sir.

Q. In the same manner as the filler sticks which are used in this Porterville machine?

A. Yes, sir.

Q. And those filler sticks are shown in this photograph, are they?

A. They show in one of the photographs, yes.

Mr. ACKER.—What?

Mr. LYON.—They show in one of the photographs.

Mr. ACKER.—What do you call the filler sticks in the photographs? [198]

Q. (By Mr. LYON.) I hand you five photographs and ask you to point out what you refer to as the filler sticks?

The COURT.—What is that?

The WITNESS.—On the photograph marked exhibit 7.

Mr. LYON.—The top view of the rollers.

The COURT.—7. What is it now on exhibit 7. That is an end view of the thing.

Mr. LYON.—It is a top view.

The COURT.—What is it you see on there?

A. Right at the bottom of the picture, with this side up, we see the inclined conveying belt, which is the opposing member to the roller; this is the conveyor belt. This, with the roller, constitutes the gradeway. Now, you will notice that directly under the enlarged portion of that roller, you will see a stick or a piece of wood practically filling up that aperture, which has the effect of, so to speak, still

(Testimony of Fred Stebler.)

further decreasing that portion of the aperture so fruit cannot get through.

Q. (By Mr. LYON.) And in the so-called modified Parker machines of the accounting, part of the roller was blocked out in this same general manner, in the same manner, so that the adjustment of the end of the roller which was blocked out didn't affect the change of grade when you adjusted the forward or grade-forming end?

A. It didn't affect the change of the grade on that particular portion of the gradeway. [199]

Q. And in that respect, to what degree or in what manner does the Porterville machine correspond or differ?

A. It does not differ at all; it is exactly the same.

Q. (By the COURT.) What is that?

A. It does not differ at all; in that respect, the Porterville machines do not differ.

Q. From what?

A. From these so-called modified machines.

Q. The one that was considered on taking an accounting in the other suit? A. Yes, sir.

Mr. LYON.—I think that is all.

Recross-examination.

(By Mr. ACKER.)

Q. Do you find, or did you find in the defendants' machine these so-called filler sticks which you testified were embodied and utilized in the Parker modified type of machine held to be an infringement?

A. Sure, they are there.

(Testimony of Fred Stebler.)

Q. Well, where do they appear, Mr. Stebler?

A. They appear in the machine just as they did in the photograph.

Q. In the Porterville machine being used at the present time these filler sticks are employed?

A. Yes, sir; I think you will find they are there.

Q. Did you find them there? [200]

A. I think so.

Q. Are you sure?

A. That is my recollection. [201]

Q. (By the COURT.) Now, in that picture No. 7, we had better mark that thing "A" so we will understand it, if that is going to be in controversy, the stick lying under the roller, mark it "A."

Q. (By Mr. ACKER.) Will you mark on the photograph what you have just referred to, Mr. Stebler, that part which you designate as a filler stick?

Mr. LYON.—He just has.

Mr. ACKER.—Where is it?

The COURT.—I think Mr. Lyon marked it on the exhibit, the one I understand you are talking about.

Q. (By Mr. ACKER.) Well, this part which you have marked "A" is what you term the filler stick on Exhibit 7? (Presenting photograph to witness.)

A. Yes, sir.

Q. (By the COURT.) Did you see this machine since we were up there?

A. Yes, sir; I saw it the first of May—the first week in May.

Q. (By Mr. ACKER.) When, if at any time, did

(Testimony of Fred Stebler.)

you compare the machines being used by the defendants with this photograph Exhibit No. 7?

A. When we were there in December.

Q. Does the fruit at any time come in contact with these so-called filler sticks which you have designated on the photograph print exhibit 7, by the reference letter "A"? [202]

A. I cannot say that I actually saw it come in contact with it, no.

Mr. ACKER.—That is all.

Mr. LYON.—That is all. Mr. Parker, take the stand a moment. [203]

**Testimony of George D. Parker, for Plaintiff
(Recalled).**

GEORGE D. PARKER, recalled.

Direct Examination Resumed.

(By Mr. LYON.)

Q. Mr. Parker, you had a conversation with me in the packing-house of the Porterville Citrus Association at Porterville in regard to the machines which are here in issue, did you?

Q. (By the COURT.) Did you talk to Mr. Lyon when we were up there about these machines?

A. Yes.

Q. (By Mr. LYON.) You told me that the roller sections of the roller side were connected by a universal joint, didn't you?

A. Connected through the bearing with a piece of cold rolled square steel shafting to drive it through from one roller to the other.

(Testimony of George D. Parker.)

Q. Have you a patent which shows that action, that form of joint? A. Yes.

Q. Can you refer to it? I think I have it here. See if you have it there, Mr. Parker, to show that joint, that is all.

Mr. ACKER.—Are you referring to that patent you had this morning?

Mr. LYON.—Yes. Mr. Parker told me he had a patent which showed that joint, and I asked him to produce it now so the Court will know what that particular joint is. [204]

The COURT.—Now, let me see if I understand what you are talking about.

Q. I show you Plaintiff's Exhibit 4, and I designate a point on it which I call "A," that rod that runs from one end of that roller to the other. You notice I have designated point "A"? A. Yes.

Q. Now, is that rod solid at point "A," or has it a joint there? A. It has a joint.

Q. What kind of a joint is it? A. A bearing.

Q. A bearing. What do you mean "a bearing"?

A. I think the roller rotates.

Q. A bearing might rotate on the bearing. It would simply go round the shaft if it rotated on the bearing.

A. It simply went around the shaft.

Q. Now, is the shaft solid at that point?

A. There is no shaft running clear up through from one end to the other on that machine, but each wooden roller is connected one to the other by means

(Testimony of George D. Parker.)

of a piece of square cold rolled steel, which drives the rollers in unison.

Q. Now, this square steel has a bearing then on this arm that goes over and holds the roll?

A. No; the roll has the bearing; the piece of square steel has no bearing at all; it is only for driving one roll to the other. [205]

Q. Which is it has the bearing?

A. The rolls themselves.

Q. You mean these wooden pieces, they have?

A. It is a sectional roll already applied to this shaft here—

Q. Now, that shaft, I will call that “B.”

A. Power is applied to shaft “B” and drives this roller.

Q. Roller “C.”

A. And in turn the next roller.

Q. What connects roller “C” and roller “D” together?

A. A piece of square steel that drives through.

Q. Is that square steel solid from one roller to the other?

A. It runs through a hole in the bearing.

Q. It runs through a hole in the bearing? Let us call the bearing “F.”

Mr. LYON.—The ends of these roller sections have a square hole in them, have they? A. Yes.

Q. And this square piece of steel is smaller than the square hole? A. Yes.

Q. So there can be a flexing of that piece of square

(Testimony of George D. Parker.)

steel and permit one of these rollers to be moved with relation to the other, and be moved with relation to each other? [206]

A. There is no section of the shaft.

The COURT.—I guess we will find out by and by.

Mr. LYON.—If you will answer the question.

Mr. ACKER.—I will have a sketch of that made for your Honor.

The COURT.—All right.

Mr. LYON.—We reserve the right to show the facts in connection with that joint, even if we close that. That is all, Mr. Parker, if you will produce that sketch. [207]

Testimony of Arthur P. Knight, for Complainant.

ARTHUR P. KNIGHT, a witness called in behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. LYON.)

Q. Please state your name, age, residence and occupation.

A. Arthur P. Knight; Glendale; 51 years of age; patent attorney and expert.

Q. What experience and education have you had tending to familiarize yourself with mechanics and with patents and patent office drawings and specifications, and also with fruit graders and fruit distributing devices?

A. I was for three years and a half an assistant examiner in the United States Patent Office, in

(Testimony of Arthur P. Knight.)

which occupation I had to examine applications for patents and their drawings connected therewith, and since then, for the last—since 1889, I have been engaged almost continuously in the business of patent attorney and expert, in which business I have had to deal with the making of drawings and the reading of drawings and patent specifications. In regard to my experience as an expert in fruit graders, would say that I have testified in a number of cases along this line as an expert.

Q. Was one of those cases the case of Stebler against [208] the Riverside Heights Orange Growers Association and George D. Parker in regard to the Robert Strain patent and this Parker patent grader? A. Yes, sir.

Q. And during the course of that case did you have occasion on various occasions to examine fruit graders both in operation and while idle? A. Yes.

Q. Have you examined at any time the machines of the Porterville Citrus Association and of the Mid-California Citrus Association at Porterville?

A. Yes.

Q. For what purpose?

A. With a view to familiarize myself, as far as I could, with their construction and mode of operation.

Q. I show you five photographs and ask you if you know of what they were taken.

The COURT.—Are these the photographs of them?

(Testimony of Arthur P. Knight.)

Mr. LYON.—Yes; these are the photographs, Exhibits 4, 5, 6, 7 and 8.

A. These are the photographs of the machines referred to.

Q. Were you personally present during the taking of any of these five photographs?

A. I was in the building; I saw them being taken, although I did not help the photographer. [209].

Q. Under whose direction was the photograph, Plaintiff's Exhibit 7, taken?

A. Partly under my direction.

Q. For what purpose?

A. In order more particularly to show the construction of the—the form of the rollers.

Q. Calling your attention to the part marked "A" in designation, do you know what that refers to?

The COURT.—"A" on what exhibit?

Mr. LYON.—No. 7.

A. This part is a strip on the table which supports the traveling belts, and its primary function is to form the lower guide for the belt, but it also being directly beneath the enlarged portion of the roller, would act as a guard strip if there were any possibility of the fruit reaching it.

Q. Now, I call your attention, Mr. Knight, to Plaintiff's Exhibit No. 5, and particularly to the devices in that photograph shown as connected to the brackets which support the rollers. Please explain to us what these devices were at the time that you examined these machines.

The COURT.—What devices? What are you

(Testimony of Arthur P. Knight.)

talking about now? Mark them something.

Q. (By Mr. LYON.) On that photograph mark these with a figure 4.

A. The part you have marked 4 is a downwardly extending [210] rod or bolt, which is, as I recall it, connected to the slidable bracket member. In the installation at the time I saw it—

The COURT.—Bolt 4. All right. Go ahead.

A. —these bolts did not, as far as I could ascertain, serve any useful purpose, as the bracket was held by the bolts, shown on top of the “U-shaped” bracket.

Q. (By Mr. LYON.) You referred to the bolts that extend through the slots in the brackets?

A. Yes, sir.

Q. Now, Mr. Knight, are you familiar with Plaintiff's Exhibit No. 1; the Robert Strain Reissue?

A. Yes.

Q. Will you please compare the Porterville Citrus Association machines with the device illustrated and described in Plaintiff's Exhibit No. 1, particularly as to the gradeway and adjusting devices, eliminating the consideration of the question of the bins; [211] I add the last for the simple reason that there is one claim on the apron bins in Plaintiff's Exhibit Number 1 which is not involved in the litigation.

A. The Strain machine, as disclosed in Complainant's Exhibit “A”—

The COURT.—Exhibit 1.

A. —comprises a plurality of rollers or roller sections mounted end to end, and a traveling conveyor

(Testimony of Arthur P. Knight.)

which extends alongside of these roller or roller sections so that a fruit grading runway is provided between the traveling conveyor and the roller or roller sections, and the roller or roller sections are mounted so as to be independently adjustable toward or from the traveling conveyor to vary the width of the opening through which the fruit passes in being graded.

The COURT.—Now, Mr. Lyon, is he doing anything more than is printed on that patent?

Mr. LYON.—Why, nothing more, except I don't want him to go into detail on that, but just compare that actually with these other—

The COURT.—I know, but he is proceeding to tell us what is in this patent 1—Exhibit 1. Now, it seems to me from my experience in these cases, I don't want these experts to tell me what is in those patents. It seems to me I can see it myself.

Q. (By Mr. LYON.) Then, in view of the remarks of the court, [212] confine your answer to comparing the devices of the defendants' machine with what is disclosed in this patent.

Q. (By the COURT.) What is in this Porterville thing that is like that?

A. In reference to the support—the mounting and adjustment of the rollers.

Q. Now, go on. I don't care anything about the mounting and adjustment of the rollers. Where is that particular photograph—

A. The point of similarity between Complainants' Exhibit Number 1 and the Porterville construction is the mounting of the rollers as indicated at 5.

(Testimony of Arthur P. Knight.)

Q. What exhibit have you got now?

A. Exhibit Number 5.

Q. Exhibit Number 5. Now, designate it by a letter. A. "D."

Q. All right. Is that that "U" bracket, as it has been called?

A. Yes; this bracket being slidably mounted on a support and fastened by bolts which pass through a groove in the bracket.

Q. Now, where is that in exhibit—that thing. What is like that in Exhibit 1?

A. In Exhibit 1 the corresponding part is—

Q. Let's see. What figure are you looking at?

A. Figure 1; it is shown in both figures. [213]

Q. Figure 1. What letter?

A. Adjusting arms—N—capital N.

Q. What is that?

A. Adjusting arms, N, sliding in guide locks Q, and adjusted by adjusting that S on P.

Q. (By Mr. LYON.) Then the parts that you have last referred to are the parts which support the ends of the rollers in both devices?

A. Yes.

Q. Now, proceed with your comparison. How do the rollers, so far as affecting the forms of a grading opening in defendants' device, as illustrated by the photograph, Plaintiff's Exhibit 5, correspond with the grade rollers of Plaintiff's Exhibit 1?

A. They correspond, except that in Defendants' Exhibit 5 these rollers—

(Testimony of Arthur P. Knight.)

Q. (By the COURT.) Plaintiff's Exhibit 5, you mean?

A. Plaintiff's Exhibit 5, these rollers—

Q. What rollers are you talking about now? You have got 5 before you?

A. They are not very well shown in 5.

The COURT.—No.

Mr. LYON.—Take one of the other exhibits in which they are shown better.

Q. (By the COURT.) Now, in Exhibit 4 I have got the rollers marked C and D on mine. Have you got Exhibit 4 there? [214] Here is 4. Now, let's see. I mark this guide arm, and that shaft there is B, and this is C and this is D (indicating on photograph).

A. In complainant's Exhibit Number 4 the rollers marked C and D are made of two different diameters, the smaller diameter portion forming the grade opening, and the larger diameter portion forming the idle portion over which the fruit must run in passing through the next grading opening. Another difference between these rollers and the Strain—and Complainant's Exhibit 1, as far as mounting goes, is that they are mounted so that the adjacent ends of two rollers—of two adjacent rollers move together, so as to be simultaneously adjusted by the supporting bracket, while in Complainant's Exhibit 1, the adjustment at the junction between the rollers—at the point between the rollers is independent for the two rollers. These differences of construction do not affect or change the mode of operation of the rol-

(Testimony of Arthur P. Knight.)

lers, as fruit grading elements or in regard to the adjustment—the effect of the adjustment.

Q. (By Mr. LYON.) You were familiar, were you, with the so-called modified Parker machines in case 1562, as considered by Mr. Lynn Helm, Special Master?

A. I will have to ask where that machine was.

Q. In the Riverside Heights Orange Growers' Association. A. Yes.

Q. And examined those machines in connection with [215] counsel and Mr. Lynn Helm?

A. Yes.

Q. And gave testimony in regard to them?

A. Yes.

Q. Now, in regard to the rollers of the Porterville Citrus Association machines, and these modified Parker machines, so-called, were there any material differences so far as functions or mode of operation in forming individually adjustable grading openings is concerned, over or different from those of those modified Parker machines?

A. No; no essential difference; there was a difference in construction.

Q. You mean in details of construction?

A. Yes.

Q. Are you familiar with Plaintiff's Exhibit 2, the Stebler distributing apparatus (handing paper to witness)? A. Yes.

Q. Will you point out what similarities exist in the mode of operation, association of elements, and the interrelation of elements in the defendants' ma-

(Testimony of Arthur P. Knight.)

chines at Porterville and the apparatus illustrated and described in Plaintiffs' Exhibit Number 2?

A. In the Porterville—

Q. (By the COURT.) Now, what are you looking at?

A. Number 4. In the Porterville machine, Exhibit Number 4, the series of rollers C, D and so forth, and the belt, which [216] is indicated by the letter E—

Q. Let's see. What is the belt there?

(Witness indicates.)

Q. That is this belt here under B?

A. Yes; formed the grader corresponding to the grader or grading element—

Q. Now, look at the drawing, figure 1, and tell me what it is.

A. Consisting of the grading rope 4.

Q. Now, let's see, 4 in figure what?

A. Figure 2.

Q. Figure 2. A. Also figures 1 and 2.

Q. Now, let's see. I haven't located 4 yet.

(Witness indicates.)

Q. Oh, yes, 4 in 1. Let's see where it is.

(Witness indicates.)

Q. Yes; I see it.

A. And the grading roller 5, figure 3.

Q. Figure 3, Exhibit 5. All right. There are four of those ropes in figure 3; are they number 4 also? A. Yes.

Q. All right; go ahead.

A. The Porterville machine, Exhibit 4, has a trav-

(Testimony of Arthur P. Knight.)

eling conveyor which I will letter F.

Q. Point it out to me. [217]

(Witness indicates.)

Q. That is F, is it? A. Yes.

Q. All right; go ahead. Well, you have already got an F. A. No; the other was E.

Q. All right. A. And a traveling conveyor G.

Q. Point that out in the picture.

A. Right here (indicating) on the other side looking through the opening.

Q. Through the opening?

A. Yes; on the other side.

Q. All right.

A. I will mark these bolts F and G, also on Exhibit 7.

Q. Go ahead. Where do you find that one?

A. These correspond to the traveling conveyor or belt 10.

Q. In figure what? A. In figure 1.

Q. Of the R. Strain. A. The Stebler patent.

Q. All right. Figure 1 in the Stebler patent. Number what now?

A. Number 10; also showing figure 3.

Q. 10 in figure 3.

A. In figures 1 and 3.

Q. Yes; all right; go ahead. [218]

A. Porterville machine has guards or deflectors shown in exhibit 5 at H.

Q. Well, there are several arranged differently there.

A. Arranged differently. As constructed, these

(Testimony of Arthur P. Knight.)

deflectors in the Porterville machine can be arranged straightaway as shown by the ones on the right of exhibit 5, or they can be placed diagonally or obliquely, as shown by the ones on the left of figure 5.

Q. Shown in the left of the photograph?

A. Yes; exhibit 5. In the Porterville machine there are a number of bins with adjustable partitions shown at—I should say, indicated at I, which can be moved along so as to adjust the positions and sizes of the bins. This corresponds to the adjustable partitions 17 shown in figures 1 and 3 of Complainant's Exhibit 2. [219]

Q. (By Mr. LYON.) How do these devices which you have pointed out as being similar to the Porterville machines of the defendant correspond in their mode of operation and functions with the corresponding devices which you have pointed out—

The COURT.—Now, just wait a minute. Before you get away from that figure 17, No. 17, figures 1 and 2, are you right about that? Figures 12, isn't it, No. 12?

A. The specification says a series of movable partitions 17.

Mr. LYON.—12 are the guides, your Honor.

The COURT.—Sir?

Mr. LYON.—12 are the guides; 17 are the partitions.

The COURT.—Oh, yes; I understand. Go ahead.

Q. (By Mr. LYON.) How do the functions and mode of operation differ in relation to these parts which you have compared, compared with each other

(Testimony of Arthur P. Knight.)

in the device of Plaintiff's Exhibit 2, and in the Defendants' Porterville machine?

A. The general inter-relation of parts is the same.

Q. Do you find in the Porterville machines the adjustable bin partitions having relation to the adjustability of the deflectors or guides?

A. Yes.

Q. And you find the inclined distributing carrier belt extending longitudinally of the machine?

A. Yes. [220]

Q. And do you find that the distributing belt and the bin space are the same, or less or greater longitudinal extension than the grading element in Defendants' machines at Porterville?

A. The belt and the bin space are of greater longitudinal extension. I would explain this by calling attention to exhibits 4 and 5.

The COURT.—Well, I am inclined to take a recess now. We will adjourn court now until 10 o'clock tomorrow morning.

(Whereupon, at the hour of 4:15 P. M., an adjournment was taken until Wednesday, July 12, 1916, at 10 o'clock A. M.) [221]

*In the District Court of the United States, for the
Southern District of California, Southern Divi-
sion, Ninth Circuit.*

Hon. OSCAR A. TRIPPET, Judge Presiding.

A-44—EQUITY.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,
Defendant.

A-45—EQUITY.

FRED STEBLER,

Plaintiff,

vs.

MID-CALIFORNIA CITRUS ASSOCIATION,
Defendant.

A-50—EQUITY.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,
Defendant.

Filed Aug. 8, 1916. Wm. M. Van Dyke, Clerk.
By Chas. N. Williams, Deputy Clerk. [222]

Los Angeles, Cal., Wednesday, July 12, 1916,

10 A. M.

The COURT.—Stebler vs. Porterville Citrus As-
sociation.

ARTHUR P. KNIGHT, recalled.

Direct Examination Resumed.

(By Mr. LYON.)

Q. Just before adjournment last night, Mr. Knight, you were asked whether the distributing belt and the bin spaces in the defendants' machines at Porterville were of the same or less or greater longitudinal extension than the grading element in said machines, and had stated that the bin spaces were of greater longitudinal extension than the grading element, and had stated that you would explain this by calling attention to Plaintiff's Exhibits 4 and 5. Please proceed.

A. From Exhibit 5 it is apparent that the length of the bin space at the tail end of the machine extends to the driving mechanism, whereas from Exhibit 4 it is seen that there is a portion of the shaft between the end roller and the driving mechanism so that the length of the grader element would be at least this much less than the length of the bins; furthermore, the larger portion of the last roller is an idle space, so that the last grading opening is that much farther from the end of the machine, making the total length of the bin space several feet longer than the length of the grader element.

Q. You have referred to certain chute forming means or [224] deflector bars in defendants' machines at Porterville. Please explain how those are constructed, and how they are arranged in said machines, and to what part or parts they correspond in Plaintiff's Exhibit No. 2 in function and mode of

(Testimony of Arthur P. Knight.)

operation and inter-relation of parts, if at all.

(Handing copy of patent to the witness.)

A. The function of these—

Q. (By the COURT.) What is the technical name of those things, if they have a name?

A. Guide means, it is called in the patent.

Q. Guide means?

A. That is what they are called.

Q. (By Mr. ACKER.) Aren't they in the patent called chutes?

A. They are also called chutes, but in the first reference to them called guide means.

Q. (By the COURT.) What are they called in the Stebler patent?

Mr. ACKER.—Chutes, if your Honor please; they are referred to as chutes.

Mr. LYON.—Mr. Knight says they are first referred to as guide means, and they are also referred to as deflectors, and they are also referred to as chutes, the three terms meaning the same thing. The first reference is on page 2 of the specification, column 2, about line 121. Your Honor has that patent before you. [225]

The COURT.—That is Exhibit 1?

Mr. LYON.—That is Exhibit 2.

The WITNESS.—Also on line 971.

Mr. ACKER.—Well, that is the part he refers to as guide means 12 and 13.

A. Yes.

Q. And those guide means as disclosed in the patent, consisting of two members, form the chute or

(Testimony of Arthur P. Knight.)

runway; is that correct? A. Yes.

Q. So when you say the guide means, you mean the parts 12 and 13?

A. That is right. In connection with the conveyor, they constitute the machine.

Q. (By the COURT.) They constitute the machine, those two members, 12 and 13? Now, we understand it. 12 and 13 are the sides of the chutes.

Mr. ACKER.—12 and 13, if your Honor please, constitute two inclined members that are arranged transversely of the carrier belt, and form a chute or runway in which the fruit is carried from the grading element into the bin.

Q. (By Mr. LYON.) In that connection I will ask you this question, Mr. Knight, by way of further interruption. In the devices of the Stebler patent, Plaintiff's Exhibit 2, what function has the upper one of the two deflectors 7 and 13 with reference to the lower one, 12, as to any fruit which is carried between the two deflectors? Referring, for instance, [226] to figure 1.

Mr. ACKER.—Now, if your Honor please, I submit that the patent is the best evidence as to what the function of those parts is, and it calls for no explanation on the part of this witness, unless it must be the same function as given in the patent itself, and that is contained in the descriptive matter of the patent.

The COURT.—It seems to me that is right, Mr. Lyon.

Mr. LYON.—Well, counsel has made a statement

(Testimony of Arthur P. Knight.)

that is confusing there, and if there is any doubt in the mind of the Court, I would like to have this witness state, because he says he is familiar with the operation of both machines. I don't want to lead him, but I know what his answer will be and that is that the upper one of those has no function, whatever, in regard to the lower one.

Mr. ACKER.—Now, if your Honor please, I submit that counsel has answered his own question for the benefit of this witness, and the document itself speaks on that point and it requires no expert testimony.

The COURT.—Where is it in the document?

Mr. ACKER.—It is in the document, and when we come to the argument we will show that the file references in this case give no other construction except what is shown.

Mr. LYON.—I am perfectly familiar with the file.

Mr. ACKER.—We will come to the file reference in due time. [227]

Q. (By Mr. LYON.) Change the form of the question, Mr. Knight, then, simply and solely in this way. You have stated that you have observed machines embodying this Stebler invention of Plaintiff's Exhibit No. 2 in actual operation. Explain to us the function of the relative guiding means.

Mr. ACKER.—If your Honor please, I make the same objection. The patent itself is the evidence on that point and it requires no expert testimony from this witness.

The COURT.—Well, I believe there is a rule that

(Testimony of Arthur P. Knight.)

the mechanics, and so forth, can explain the mechanism so that the Court can understand what the patent is and apply it to the mechanism. This question would involve that phase of it.

Mr. ACKER.—Under that phase, an expert is entitled to tell the Court what any one part or more parts of the device is, but not as to the operation of those parts; that is, as to the patent itself.

The COURT.—Before we get away from that. I have been looking at this figure 1 in the patent, you call those things 12 and 13, form the sides of the chutes. Now, if I understand this drawing, 12 is also part of the telescope and 13 is the upper part of the telescope.

Mr. ACKER.—No, your Honor.

Mr. LYON.—That is correct.

Mr. ACKER.—Excuse me, Mr. Lyon. If your Honor please, 12 and 13 do not constitute the same piece. [228]

Mr. LYON.—Yes, they do.

Mr. ACKER.—One minute. 12 and 13—11 is the telescopic end of 12 and 13. 12 and 13 at its end each has a telescopic section, and that telescopic member is 11; 12 and 13 form the chute.

The COURT.—Well, just come up here, Mr. Acker.

(Informal discussion at the bench.)

Mr. LYON.—There is no doubt, of course, in regard to this showing, or anything else, the Court is entitled to hear the expert testimony. No expert testimony is binding on the Court; it is simply advisory.

(Testimony of Arthur P. Knight.)

The COURT.—I will overrule the objection and hear what the witness has to say about it.

The WITNESS.—The question, as I understand it, is as to the mode of operation of these members that form the side walls.

Q. (By Mr. LYON.) And what they are.

A. They are formed by the two telescopic members, which, as in lines 126 and 127 of the patent, are described in such a way that the member section 12 slides within section 13.

Q. (By the COURT.) Line 126?

A. To 127.

Mr. LYON.—Page 2.

Mr. ACKER.—I wish to state, your Honor, I was incorrect, that 12 is the sliding member of 13; I was incorrect in my statement, but the drawing was so confusing there as to the [229] reference of those numerals.

Q. (By Mr. LYON.) Then, Mr. Knight, proceed to tell us the construction of the defendants' machine, so far as it has any guiding means corresponding in function, in whole or in part, with these guiding means of the Plaintiff's Exhibit 2, pointing out its mechanical construction, and what differences in construction and mode of operation and inter-relation of parts there are.

A. These parts are indicated at H on Exhibit 5, and also marked as H on Exhibit 8.

Q. (By the COURT.) What is that?

A. Exhibit 8.

The COURT.—Now, wait a minute. I want to

(Testimony of Arthur P. Knight.)

keep my copy marked up with you.

Mr. LYON.—We have only one copy of the Exhibit 8, Judge.

The COURT.—All right. (Examining exhibit.) Well, that is the guide. What about that?

A. The function of these guides or deflectors, or guards, is to change the course of travel of the fruit, as it is carried downwardly and forwardly by the incline conveyor belt. In saying “forwardly,” this applies to only one or more of the belts in the defendants’ machines, as one or more of the belts have a reverse motion, but the effect is the same, that these guards or guides control the point at which the fruit leaves the traveling conveyor by preventing it from running straight down to the bins. The [230] object of this operation is two-fold. In the first place, it insures the carrying forward of the fruit to a greater distance longitudinally than the length of the grader element thereby contributing to one of the important features of the Stebler, machine, namely, the provision for a greater longitudinal extension of the bins than of the grader element. Another function of these guides or deflectors is associated with their adjustability. These guides or deflectors are fastened to the bed, which supports the conveyor belts by bolts which are secured in longitudinal slots in the bed so that these guides may be moved along to any desired longitudinal position. By doing this, the fruit may be discharged at any desired point of the

(Testimony of Arthur P. Knight.)

bin length from any one of the adjacent—from the adjacent grader opening. This contributes to the effectiveness of the adjustability of the bin partitions, since without this adjustment of the guides, it would be of little use to have the bin partitions adjustable. In other words, when the fruit is running to certain grades in excess, the corresponding bins will be enlarged by proper adjustment of the partitions, and these guides or deflectors will be correspondingly adjusted to guide the fruit from the corresponding grade opening to that bin at the proper portion thereof. In both of these respects the function and mode of operation of these guides is equivalent to that of the Stebler machine. The specific construction of the guides is different, and the [231] manner in which they are adjusted is different, but the result is the same as regards the objects aimed at, namely, the delivery of the fruit to adjustable points in the bin length, and the carrying forward of the fruit to a greater longitudinal extension than the grader element itself.

Q. (By Mr. LYON.) Referring now to Plain-Plaintiff's Exhibit No. 1, the Robert Strain Patent, in that patent, how is the rope belt mounted?

A. It is mounted on—

Mr. ACKER.—If your Honor please, I believe the patents are the best evidence to tell how that rope is mounted.

The COURT.—It seems so to me. Of course, I recognize the fact that when this testimony is taken before a Commissioner it is necessary to go

(Testimony of Arthur P. Knight.)

into those details, but I don't think it is necessary before a court. I think Mr. Lyon can tell from a patent what about it; if there is any application to mechanics, why, I would be glad to hear any expert on it.

Mr. ACKER.—I have no desire to interpose an objection to anything in the trial of the case. I want everything to go before the court, even things that may not appear relevant, but when it comes to the construction of the patent itself, that is for the patent to speak. The courts have ruled on that repeatedly.

Mr. LYON.—That is not true to that extent, but it may be that it is clear how this belt is supported in this particular [232] question.

Now, Mr. Knight, in the defendants' machines at Porterville, how are the grading belts supported in that machine?

A. They are supported in guides on the table these guides having wall portions, which engage the edges of the belt and confine them laterally, forming grooved guides for the belt.

Q. And do such grooved guides correspond in function and effect to the grooved guide of the Plaintiff's Exhibit No. 1?

Mr. ACKER.—That question is objected to as immaterial, irrelevant and incompetent.

The COURT.—I will overrule the objection.

Mr. ACKER.—Exception.

A. They do.

Q. (By the COURT.) Now, what is this grooved

(Testimony of Arthur P. Knight.)

guide in 1? I never saw that machine. What letter is it?

A. I' and I. You will find a reference to it in line 40 of page 1.

Q. Now, that I seems to be the space between those two ropes, and I' seems to be the rope.

A. Well, that is simply an unfortunate letter. By referring to line 40 of page 1—

Q. Line what?

A. Line 40 of page 1, I is the guide and I' is the groove. That means, your Honor, that the rope forms one [233] side of the fruit bin.

Q. Guide I, according to that language, seems to form one side of it.

Mr. ACKER.—The guide I, if your Honor please, constitutes one side of the fruit runway, and the H is the rope that propels the fruit through the runway.

Mr. LYON.—We disagree absolutely on that proposition. That is why I asked him. The fruit never touches on anything except the rope or belt in that device.

The COURT.—Where is the belt?

Mr. LYON.—The belt is the round rope H.

The COURT.—H?

Mr. LYON.—Yes; and the grooved guide is the semi-circular groove that is in the wooden piece that supports the belt.

The COURT.—I' and H refer in this drawing to the same thing; that is I' there by H.

(Testimony of Arthur P. Knight.)

Mr. LYON.—Well, the I' refers to the groove in which H is supposed to be running—

The COURT.—And H is the rope

Mr. LYON.—H is the rope belt.

The COURT.—What is I?

Mr. LYON.—I is the wooden piece which forms the partition in which the groove I' is made.

Mr. ACKER.—There is a long wooden block that fills up that space between the two ropes. The letter I is on [234] that block.

The COURT.—Go ahead.

Q. (By Mr. LYON.) Now, then, how does this grooved guide in which the belts in defendants' machine are supported and run, correspond, so far as all the functions are concerned, with this grooved guide in Plaintiff's Exhibit 1?

A. Corresponds exactly.

Q. Do you remember the grooved guide in the so-called Parker Patent Device of the suit 1562, and in the modified machines?

A. That is the Riverside Heights?

Q. Yes.

A. I couldn't remember the details without refreshing my memory.

Q. This grooved guide you refer to in defendant's machine runs longitudinally of the machine with the longitudinal grading belt, does it? A. Yes.

Q. And state whether or not it is arranged parallel with the plane which passes vertically and longitudinally through the center of the roller.

A. It is.

(Testimony of Arthur P. Knight.)

Q. Have you examined and are you familiar with Plaintiff's Exhibit No. 3, the Thomas Strain Patent? (Handing copy of the patent to the witness.) A. Yes.

Q. When you examined the defendants' machines at Porterville, [235] did you make any sketches of the adjusting means which were under the grading belt? A. I did.

Q. Have you such sketches?

A. Yes. (Producing sketch.)

Q. Does this sketch truthfully represent one of such grading means as to construction and operation? A. So far as a sketch of that nature can.

Q. And it was made by you on November 12th, 1915, at Porterville? A. Yes, sir.

Q. Taking this sketch in connection with the photographic exhibits, will you please compare the defendants' machines with the disclosure of Plaintiff's Exhibit 3, giving your attention first to the grading machine proper as a device for separating the fruit in accordance with its sizes, and afterwards in regard to any features of similarity there may be as regards the belt or distributing system.

A. In this sketch the part marked "X" is a plate, which extends below the belt in an opening in the bed on which the belt runs. This plate is adjusted by a screw or bolt marked "Y," so as to raise or lower the belts, and adjust its distance from the roller marked "Z." This adjusting means is directly beneath the smaller portion marked "Z'" of the roller, so that this adjusted portion of the belt,

(Testimony of Arthur P. Knight.)

together with the smaller portion of the roller, form the grade opening [236] and this adjustment provides for adjusting the width of the grade opening. This is equivalent to the construction in exhibit 3 consisting of the inclined leaves referred to as hinged leaves in 13, as shown in figure 8.

Q. (By the COURT.) Where is that?

A. (Indicating to the Court.) In figure 7 of exhibit 3.

Q. I don't understand it. What is there in this drawing that is like this that raises the belt up?

A. The wedges shown in figure 9 at—

Q. Oh, this wedge thing?

A. The wedge, yes. It raises the hinged leaf.

Q. Oh, yes. I know what you are talking about now.

A. So as to adjust or vary the distance between the belt running on the hinged leaf and the rotating rod 20.

Q. (By Mr. LYON.) There are hinges at 14 of figure 7, so that you can raise the belt towards or drop it away from the rod or roller. Proceed, Mr. Knight.

A. The construction of this is different from that of the Porterville machine, in that the adjustable support for the belt is hinged, and its height is adjustable by a wedge, instead of being grooved directly up and down by a bolt as in the Porterville machine, but its effect upon the belt is just the same, and its effect on controlling the size of the grading

(Testimony of Arthur P. Knight.)

opening is just the same. In respect, therefore, to the mode of operation of the machine as a grader, this part is the equivalent. In regard to the—Would your Honor [237] mind if the question is read, it is so long ago?

Mr. LYON.—Read the question.

(Question referred to read by the reporter as follows: “Q. Taking this sketch in connection with the photographic exhibits, will you please compare the defendants’ machines with the disclosure of Plaintiff’s Exhibit 3, giving your attention first to the grading machine proper as a device for separating the fruit in accordance with its sizes, and afterwards in regard to any features of similarity there may be as regards the belt or distributing system?”)

A. Comparing the guides or deflectors in the Porterville machine, as shown at H in Exhibit 5 with the so-called guards indicated at 36 in figure 1 and 11 of Exhibit 3, the function of these guards is to deflect the fruit and cause it to leave the conveyor at a definite point so that it will be discharged into the bin at the proper point, and in this respect this function of the guards in the Plaintiff’s Exhibit 3 is performed by the guards H, Exhibit 5, it being understood that these guards 36—

Q. (By the COURT.) Where? Point it out.

A. Right here. (Indicating to the Court.)

Q. Oh, yes.

A. —do not have the longitudinal adjustability which is common to the Porterville machine, Ex-

(Testimony of Arthur P. Knight.)

hibit 5, to Exhibit 3, but in so far as they form a definite control of the path of the fruit from each grader opening to a definite [238] part of the corresponding bin, they perform the function of Exhibit 3.

Q. (By Mr. LYON.) Do they perform that function in a different or substantially the same manner as the deflectors or guards of Exhibit 3?

A. In my opinion, they perform the function in substantially the same manner for the reason while these two parallel opposite portions of the guard 36 in Exhibit 3 are connected by an oblique portion, yet the same effect is produced by the two parallel opposite guard members shown at H at the right-hand side of Exhibit 5, these guard members overlapping, so that when the fruit runs past the end of the upper guard member, gravity will carry it down against the lower guard member, and it will then run along the same for discharge into the bin at a definite point.

Q. Then, if I understand you correctly, Mr. Knight, in regard to this Plaintiff's Exhibit 3, you will find in the defendants' machines at Porterville, as in Plaintiff's Exhibit 3, two different means by which the grade openings may be adjusted; first, the one by adjusting the grading rollers or rod with respect to the belt, and the other by adjusting the belt with respect to the portion of the rod or roller; is that correct? A. That is correct.

Q. (By the COURT.) Well now, this roller, as

(Testimony of Arthur P. Knight.)

I understand it, the defendant claims that roller is inadjustable [239] in the machine as it stands.

Mr. ACKER.—That is correct.

Q. (By the COURT.) Did you see it after they fastened those rods—those belts?

A. The machine was not in operation when I was there.

Q. (By Mr. ACKER.) Is all of your testimony, Mr. Knight, regarding the defendants' machine, based on an observation of the machine when it was not installed and not in an operating condition? A. It was installed but not operating.

Q. Was it installed in an operating condition? Was it fixed as it was finally ready for operation?

Mr. LYON.—That is objected to.

The COURT.—I think you had better wait for the cross-examination.

Mr. ACKER.—If the machine was not in an operating condition, I object to this witness testifying about it.

The COURT.—That will only go to the weight of his testimony.

Q. (By Mr. LYON.) Mr. Knight, I will ask you, in that connection, so far as these so-called deflectioners are concerned,—state whether or not they have any fixed position or relation in those machines, or are they adjusted apparently at the will of the operator?

Mr. ACKER.—If your Honor please, I object to this question. This witness has not displayed any familiarity [240] with this machine in operation.

(Testimony of Arthur P. Knight.)

The COURT.—I overrule the objection.

Mr. ACKER.—Exception.

A. While I did not see the machine in operation, it was sufficiently complete to enable anyone, calling myself an expert, to see how it would operate, and I am sure I know how it was intended to work, and its mode of operation.

(By Mr. LYON.)

Q. Now, answer the last question.

A. The deflectors or guide members are provided with means for mounting them in any position along the conveyor belts so that they have no fixed definite position.

Q. Assume now, Mr. Knight, that after you had seen these defendants' machines, the tops of the bolts holding the brackets for the roller section had been driven down or riveted, what have you to say in regard to such riveting causing an absolute fixture of those adjustments in place?

A. It would be an easy matter with a good sized monkey wrench to turn the nuts back slightly so as to enable the upper bracket member to be slid up or down on the support so as to adjust the roller.

Q. Is that a common or uncommon way of locking a nut upon a bolt so that the rattle of the machine will not loosen it, and yet effect a ready adjustment of it when required?

A. It is not uncommon. [241]

Q. Basing your answer upon your experience with machinery, and particularly your observation of the defendants' graders and the other graders

(Testimony of Arthur P. Knight.)

with which you say you are familiar, can you give us any other purpose than for the purpose or adjusting the rollers with respect to the belt for the use of this slot and bolt adjustment connection of the brackets for holding the rolls in the defendants' machine?

Mr. ACKER.—That question is objected to, if your Honor please. It is leading in the extreme.

The COURT.—I don't understand it. Read the question.

(Last question read by the reporter.)

Mr. LYON.—In other words, is there any other reason that he can give why that was provided in that machine, basing his answer on his mechanical experience?

The COURT.—As I understand it, you want to find out—Let us mark these bolts on this—take Exhibit 4.

Mr. LYON.—Mark the bolts referred to—

The WITNESS.—These are marked D in Exhibit 5.

Q. The bolts referred to are marked D in Exhibit 5.

The COURT.—They are much plainer on that 4.

Mr. LYON.—Mark them D on 4 also, Mr. Knight.

The COURT.—There is already a D on 4.

Mr. LYON.—Make it a Z; we have no Z, anyway.

The WITNESS.—I have got a Z, too. [242]

Q. You have? A. Not on these.

Q. There is no Z on 4?

The COURT.—Call it D'; that will be all right.

(Testimony of Arthur P. Knight.)

Mr. LYON.—All right; D'.

Q. (By the COURT.) Now, there are two bolts on each of those arms there called D', both of them; you have got it on 4, have you? A. Yes, sir.

Q. These bolts here? (Indicating on the diagram.) A. Yes, sir.

The COURT.—All right, now; go ahead. What you want to know, is there any other purpose for those bolts in those slots with the exception of adjusting the size of the roller?

Q. (By Mr. LYON.) The roller towards and away from the belt. Answer the question.

A. I cannot conceive of any other purpose or function.

Q. Mr. Knight, with respect to the rollers or the roller in this device, did you observe whether or not the rod or shaft was continuous throughout the length of the roller side of the machine, or what the connection was between the rollers?

A. I was not able to examine the connection itself.

Q. To what extent did you observe the relation of each roller section to the other in that respect?

A. I saw that they were mounted end to end, and as far [243] as I could determine, they were connected to rotate in unison. I saw one of the rollers separately, and it had in connection with it a socket such as would be used for rotation.

The COURT.—Is there going to be any controversy about it?

Mr. LYON.—Not if the Court understands.

(Testimony of Arthur P. Knight.)

The COURT.—Mr. Acker said he was going to furnish us a drawing of those connections.

Mr. ACKER.—I will furnish you a drawing, your Honor.

Mr. LYON.—All right. We will close the direct examination of the witness on that. You may inquire, Mr. Acker.

Cross-examination.

(By Mr. ACKER.)

Q. Mr. Knight, having reference to Complainant's Exhibit I, the Robert Strain Re-issue Patent, is it not a fact that each sizing roller of said machine is mounted in independent brackets; that is, a bracket at each end, and which brackets are adjustable transversely of the machine to vary the position of the sizing roll relative to the traveling rope or conveyor of the runway? A. Yes.

Q. How many rolls of that type, each mounted in bearings of its own, or embodied in the grader of said letters patent, as you are familiar with the same and have seen it [244] in operation?

A. 9 or 10 rollers, as I remember it.

Q. And any roller of the series of rollers is adjustable toward and from the movable member of the fruit runway and independent of any other roller of the series? That is correct? A. Yes, sir.

Q. Was your comparison of the defendants' machine with the invention of the Strain Re-issue Patent based on the assumption that the sizing sections of the rotatable wall member of the fruit runway of

(Testimony of Arthur P. Knight.)

the defendants' machine were adjustable toward and from the traveling member of the fruit runway?

A. Read the question.

(Last question read by the reporter.)

Q. And the adjustment of one section being independent of any adjustment of another section.

A. My observation was based on the mode of operation of these parts, which, with the construction of the Porterville machine, produces the same result as the independent adjustment in Exhibit 1.

Q. My question was, Mr. Knight, whether your testimony was based on the assumption that those roller sections were adjustable toward and from the traveling member of the fruit runway?

A. Yes. [245]

Q. (By the COURT.) That is to say, you have assumed—and take Exhibit 4—you have assumed that C and D were adjustable to and from E?

A. Yes, if you mean by E the belt on this side. Unfortunately, the member E refers to the belt on the opposite side to the roller marked C.

Q. (By Mr. ACKER.) And equally so, your testimony was based on the assumption that those roller sections of the rotary wall member of defendants machine were adjustable toward and from the carrier member of the fruit runway for varying any grade outlet, or a given number of grade outlets for the fruit during the operation of the machine; is that correct? A. Yes.

Q. Directing your attention, Mr. Knight, to Com-

(Testimony of Arthur P. Knight.)

plainant's Exhibit 3, the Thomas Strain Patent, I will ask you to explain how the fruit passing beneath the grading rod moves or travels toward the fruit receiving bins.

A. Immediately after passing between the grading rod 20—

Q. (By the COURT.) Point it out.

A. (Indicating to the Court.) —the nearest portion of the carrier belt of the conveyor it encounters the upper member 36 of the guard, and is carried along the guard by the motion of the conveyor belt, and runs down onto the lower portion of the guard 36, and into a depressed portion 19 on the belt. It runs along this depressed portion [246] until it strikes an adjustable deflector shown at 36-B in figure 11, which deflects it off of the belt into the bin.

Q. (By Mr. ACKER.) Well, does the fruit after passing beneath the grading rod flow or move across the conveyor belt by gravity toward the fruit receiving bins?

A. Its motion transverse or towards the bin is by gravity.

Q. And what purpose does the member 36 serve relative to the transverse movement of the fruit in its flow towards the bins?

Q. (By the COURT.) Point it out. [247]

A. (Indicating to the Court.) It forces the fruit to move longitudinally and it keeps it from transverse movement until it passes the upper member 36, and then from its transverse movement until it

(Testimony of Arthur P. Knight.)

reaches the lower part of the member 36.

Q. (By Mr. ACKER.) And the part 36 then serves as a longitudinally disposed barrier for arresting the transverse movement of the fruit as it flows from the grading rod toward the fruit receiving bin, is that correct? A. Yes.

Q. And to that extent it serves the same purpose, does it not, as the barrier employed in the defendants' device for arresting the line of travel of the fruit flowing by gravity from the sizing member towards the fruit receiving bin?

A. Yes.

Q. Now, what purpose does the part marked 36-B in the device of the Thomas Strain patent of Defendants' Exhibit Number 3 serve?

A. It determines the particular point at which the fruit will be deflected from the depression in the conveyor and discharge into the bin.

Q. That member 36-B is longitudinally adjustable relative to the longitudinal traveling carrier member, is it not, Mr. Knight? A. Yes.

Q. And what is the purpose or what function is performed by the member 36-B of the said Thomas Strain patent? [248]

A. The purpose or function of this is to discharge the fruit into the bin at a given point so as to distribute the fruit uniformly throughout the bin, the idea being that if the fruit is allowed to run into the bin from the grader at different points along the bin there will not be an equal distribution.

(Testimony of Arthur P. Knight.)

Q. In other words, the member 36-B, which is longitudinally adjustable in the Tom Strain device in the Complainant's Exhibit 3 is employed for the purpose of regulating the discharge point of the fruit relative to the bin, and permits such regulation at the will of the operators?

A. Yes; but with respect to a single bin only, it does not provide for adjustment of the discharge relatively to the bin length as a whole, and therefore, it has no relation to the adjustment of the bin walls.

Q. It regulates the point of discharge for the sized fruit at any point desired respective to the bin and irrespective to the length of the bin, is that not correct?

A. Well, the bins are definite lengths, so I don't understand your question.

Q. Irrespective, Mr. Knight, as to any particular bin, or whether the bin is of a definite length, it would regulate and permits regulation relative to the point of discharge of the sized fruit to the bin which is to receive the fruit, does it not?

Mr. LYON.—That question is objected to as confusing and [249] involved and indefinite.

The COURT.—I don't think so; the objection is overruled.

Mr. LYON.—He says without regard to a bin, and then he says in the tail end something with regard to a bin.

The COURT.—Objection overruled.

(Testimony of Arthur P. Knight.)

A. If I understand the question, my answer would be that this deflector determines and controls the point of discharge of the fruit into the corresponding bin with respect to the length of the bin.

Q. (By Mr. ACKER.) Irrespective of the length of the bin.

A. No; I would say with respect to the length of the bin.

Q. All right. I will accept your qualification. If the bin is 6 feet wide or long, the longitudinally adjustable deflector, as you term it, 36-B permits the operator to vary or regulate the point of discharge of the fruit at any point within the sphere of the length of that bin, does it not?

A. Provided it was made of sufficient length, yes.

Q. What do you mean by "sufficient length," Mr. Knight?

A. Well, from your question I assumed that you meant if they enlarged the bins it would still provide for discharging to any point on that bin.

Q. No; my question was as to the bin irrespective of size, it would control the point of discharge to a 3-foot bin, and equally so to a 6-foot bin respectively, would they not?

A. If the machine was built that way; yes.

Q. (By the COURT.) That is to make the box fill up the same [250] depth all the way along?

Mr. ACKER.—That is to get the uniform distribution of the fruit within the bins, is it not?

A. That is not the idea set forth in this patent.

(Testimony of Arthur P. Knight.)

The idea is to discharge at one point so that all fruit will have an equal start in the bin and will go through one point, and all the packers working on that bin will be working on the same size fruit. Otherwise, if they allowed the fruit to come from the grader to the bin, there might be a little—there might be fruit coming from so much a smaller opening, or larger opening, or with this inclined construction that he has on his grading rod, there would be a little tendency in variation in the fruit along the bin. This is to equalize; it is an equalizer for the fruit that goes to any one bin, so it is uniform along the bin.

Q. (By the COURT.) You mean the same sizes of fruit?

A. Yes; but, of course, there is variation.

Q. Then that don't control the way the fruit lies in the bottom of the box at all?

A. It will tend to make a cone-shaped deposit in the box because it will all come out from that one point and spread from that like a cone.

Q. And then it don't spread it along the bottom of the box? A. No; it does not.

Q. (By Mr. ACKER.) It is your understanding that the part 36-B of the said Thomas Strain patent does not permit the [251] operator to regulate the distribution of the fruit evenly throughout the bin without reference to the patent, Mr. Knight, is that your understanding?

A. That was not the understanding of that de-

(Testimony of Arthur P. Knight.)

flector, nor is not the mode of operation.

Q. (By the COURT.) In this Tom Strain patent then, all the fruit drops into the bin at the same place all the time? A. Yes.

Q. (By Mr. ACKER.) Now, that is your understanding of the Tom Strain patent, Mr. Knight?

A. Yes.

Q. Well, what interpretation or construction would you place upon this language of the patent, reading now between lines 74, page 2, of the specification, and having reference to the deflector 36-B, which is longitudinally adjustable. (Reading:) "This allows the fruit to be delivered into the bin in such a way that it is thoroughly mixed. If the fruit were delivered into the bins direct from under the grading rods, the size of the fruit in the bin at one extreme side would be larger than the size at the other side. To obviate this difficulty I employ the guards 36 and the deflectors 36-B, by means of which the fruit is thoroughly mixed in the bins, and no particular size occupies a particular place in the bin, as would be the case if the guard and deflectors were not employed."

A. I place on that the exact construction which I gave. [252]

Q. (By Mr. LYON.) And what was that, Mr. Knight? Explain it right there.

A. That by causing all the fruit from any one grading opening to be discharged into the bin at the same place, why then, as the fruit goes from that

(Testimony of Arthur P. Knight.)

place into the bin, into different parts of the bin, it would produce a uniform mixture for each packer working at that bin to operate on.

Q. (By the COURT.) Then in that event there would be no deflectors at all in that; there would not be any deflectors used at all where the fruit all runs into the same place in the box, would there be?

A. The idea, as I take it, is this: That the grading opening, in order to have any reasonable capacity, must be of some considerable length, so to get part of a foot or so. In that length as the fruit rolls over there will be a tendency, even in the smaller adjustment, of a grader in which, say, for the smaller sizes in that grade to pass through first, and the larger sizes will squeeze through before they get to the end of the opening. Now, if you don't have a deflector, the ones that went through first go to the first part of the bin—

Q. They all go to the same place, like a funnel?

A. Like a funnel, exactly.

Q. (By Mr. LYON.) Clear the rest of that up, Mr. Knight. Don't the parts 36 block out also the same as the filler sticks part of the portion between the grade rod and the belt so [253] as to prevent discharge except where it is up? Pardon the interruption, I just want to get the whole thing together there.

Mr. ACKER.—The patent is very clear on that, Mr. Lyon.

(Testimony of Arthur P. Knight.)

The COURT.—We will take a recess until half-past eleven.

(Recess.)

Q. (By Mr. ACKER.) What is the character of the grading rod designated by the reference numeral 20 in the device of the Tom Strain patent, plaintiff's exhibit number 3? (Handing copy of the patent to the witness.)

A. They are slender and flexible and rotating.

Q. It is a long, slender, flexible rod, is it not?

A. Yes.

Q. Have you any idea as to the diameter of the said rod? A. No.

Q. You never saw one of these machines in operation, did you, Mr. Knight? A. No.

Q. And that rod is of such a character that at points throughout its length it may be flexed toward or from the conveyor belt to vary the distance therefrom to secure variations in the grade outlets for fruit to be sized, is that correct? A. Yes.

Q. And how is it flexed?

A. By means of the supporting arms shown at 21.
[254]

Q. (By the COURT.) Point it out.

A. (Indicating to the Court.) 21 in figure 9, which are mounted pivots 22; between the uprights, so as the friction will engage the uprights and hold the rod in any position to which it may be kept.

Q. (By Mr. ACKER.) Are the bins of the said Tom Strain patent projected beyond the grader

(Testimony of Arthur P. Knight.)

member of the apparatus, or the grading point of the fruit?

The COURT.—The discharge point would be a proper thing.

Mr. ACKER.—I accept that, your Honor; I think that is a very good designation, the discharge point.

A. I do not see that they are.

Q. I understand from your direct examination that the means disclosed in the Tom Strain patent, Plaintiff's Exhibit Number 3, for raising and lowering the conveyor belt at points throughout its length of travel comprised a hinged plate or member 12?

A. Yes.

Q. And you expressed the opinion that the device employed in the defendants' machine for raising and lowering the belt at points throughout its length of travel was the equivalent of the hinged leaf 12, is that correct?

A. The hinged leaf 12, and its adjusting means.

Q. Is it your opinion as an expert that any means for raising and lowering the conveyor belt to vary the distance between the upper surface of the said belt and the rotating [255] member of the grade runway constitutes a mechanical equivalency of the hinged adjustable leaf member of the said Tom Strain patent.

The COURT.—Read that question.

(Last question read by the reporter.)

A. Yes; provided it was assembled in a machine in such manner as to produce the same result.

Q. The result of adjusting a traveling carrying

(Testimony of Arthur P. Knight.)

member and fruit grader with respect to the rotary member—with respect to the opposing member of the said fruit runway, would be to vary the distance and to regulate the grade outlet ways for sized fruit, would it not? A. Yes.

Q. You were present throughout the testimony given by Mr. Fred Stebler, the complainant, herein were you not, Mr. Knight? A. Yes, sir.

Q. And you heard the testimony of Mr. Stebler with reference to a so-called filler stick employed in the defendants' machine, and I believe you have referred to the exhibit so-called filler stick in your direct examination. Please explain the purpose and function of the said so-called filler stick as disclosed by the photographic exhibits which you have referred to in giving your testimony.

The COURT.—That is A in 7.

A. This part A serves as a guide for the lower edge of the belt, which is shown directly below in 7.
[256]

Q. That would be the upper edge of the belt, wouldn't it?

A. Lower edge. This is looking down; it is cut away or not present at the grade opening, so that it forms an additional barrier for that portion of the roller which is between the grader opening and the other end of the roller. The enlargement of this other portion of the roller and the presence of this part A, both operate to reduce the space through which the fruit could pass. Whether or not the fruit would actually touch this strip depends on how

(Testimony of Arthur P. Knight.)

small it is and how far it can work under the roller.

Q. (By Mr. ACKER.) Is it your opinion that those so-called filler sticks in any manner control the flow or travel of fruit?

A. They might in some cases if a very small orange were running along the runway, it might work under the roller sufficiently to be arrested by this part A.

Q. Did you ever observe a machine in operation where the so-called filler stick served any such function? A. I have seen machines, yes.

Q. I mean used by these defendants. A. No.

Q. What is the length and approximate height of those so-called filler sticks?

A. I should say they were between one-half and three-quarters inches high, to the best of my recollection; as to the length they are substantially the same length as the [257] larger portion of the roller.

Q. Now, is it not a fact, Mr. Knight, that the only purpose served and the only function for what you have termed a filler stick in defendants' device is to support the belt relative to the inclined bed over which it travels, and prevent a downward slippage of the belt?

A. I cannot say that would be the only function, because I can see that the other might take place.

Q. What induced you in giving your testimony to designate that member as a filler stick?

A. I don't think I did in my testimony.

Q. In the case of Stebler versus Parker and Riverside Heights, number 2232, throughout your testi-

(Testimony of Arthur P. Knight.)

mony you referred to filler sticks that were employed in that device, did you not?

A. That was one name used; they were generally called overlapping arms.

Q. And what you meant by filler sticks as employed in that case was a form of member which closed a passage that otherwise would exist and permit the outflow of the fruit, but by being embodied in the machine, caused the fruit to travel in conjunction with the belt from one independently adjustable roller to within the sphere of an adjacent adjustable roller, is that not a fact?

A. In that machine, yes.

Q. And it was in that sense that you used the term in [258] that case, "filler stick," was it not?

A. In that case.

Q. To block out an opening? A. Yes.

Q. Now, do I understand you to testify that those so-called filler sticks appearing in those photographs were introduced in that machine of the defendants or those machines of the defendants for carrying fruit from one grading section of the rotary wall member to another grading section?

A. I do not say that they were introduced for that purpose, but I do say that they may serve that purpose in some cases.

Q. At what distances are those so-called filler sticks in the defendants' machines located relative to the rotary wall member of the grade runway?

A. They were quite close as shown in exhibit 7; I don't remember the exact distance.

(Testimony of Arthur P. Knight.)

Q. Well, is there any distance disclosed by those photographic exhibits?

A. No; you cannot measure it because it is a perspective view.

Q. I understand you to testify that you were present when those photographs were taken?

A. I was there, yes.

Q. You testified that you examined the machine, and you were familiar with it?

A. Certainly. [259]

Q. Aren't you able then from that examination and your so alleged familiarity with that machine, able to state as to the distance at which those so-called filler sticks were placed relative to the rotary wall member, and more particularly with reference to the sizing sections of the said rotary wall member of the fruit runway?

A. No; I didn't measure the distances and I can only say it was quite a small distance. [260]

Q. What would happen to the endless traveling belt of the defendants' machine if those so-called filler sticks were not employed? A. It would sag.

Q. That is, it would sag down the incline bed?

A. Yes.

Q. And destroy the effectiveness of the belt as a means for correctly carrying the fruit; is that correct? A. Certainly.

Q. Now, questions have been asked you and in your answers are you not satisfied in your own mind, Mr. Knight, that the only purpose for which those so-called filler sticks are employed in the defendants'

(Testimony of Arthur P. Knight.)

machine is to uphold that belt and prevent the downward sag of it?

A. I am satisfied that that was the purpose for which they were introduced, but I am equally well satisfied they may serve another function, perhaps unintentionally.

Q. That is, they may serve another purpose if the rotary wall member of the fruit runway is of such a construction as will permit fruit to pass beneath the said rolls at points where it is not designed to pass as sized fruit; is that what you mean? A. Yes.

Q. So in the present case you have not employed the term "filler stick," in connection with the defendants' [261] machine in the same sense in which you employed the term "filler stick" in connection with equity suit No. 2232, and as exemplified by the model on the desk before you, as was introduced as an exhibit in said case; is that correct?

A. Not exactly in the same sense; it was more in the sense of a member where there was a filler stick extending along the side of the roll, as I remember.

Q. And if your memory is correct, is it not a fact that you testified that so-called filler stick in the modified Parker Machine served the purpose of bridging over so to speak, a certain space, and to aid in carrying the fruit from one section of the rotary wall member to another section, which would be a sizing section?

A. No; as I remember it in the case I have in mind, my memory may be at fault, the filler stick in the modification was for blocking out a portion of the

(Testimony of Arthur P. Knight.)

roller length equivalent to the formation of the conical roller in another modification.

Q. In other words, you used the term "filler stick" in connection with the so-called modified machine in the same sense in which you used the term "filler stick" in connection with the suit in equity 2232?

A. In an equivalent sense, yes.

Q. I called your attention in that modified type of machine, it was incorporated therein by the maker thereof to [262] serve the same purpose as the so-called filler stick in equity suit 2232; is that not correct?

A. An equivalent purpose, yes.

Q. Now, Mr. Knight, when were you present for the first time in the packing-house of the defendants to the present action for the purpose of an inspection of a machine or machines?

A. November 12, 1915.

Q. That is the time these photographs were taken that have been introduced in evidence, and which you have testified to? A. Some of them at least.

Q. Were they not all taken at that time? I so understood your testimony to be.

A. No; my testimony was that I was assisted in the making of one of these photographs, and I was present in the building during the time the photographs were being taken. Now, as to what the photographer did, I cannot swear.

Q. Were the machines and the associated parts in the same condition at the time you visited or entered

(Testimony of Arthur P. Knight.)

the factories, as they were in at the time those photographs were taken?

Mr. LYON.—Read me that question.

(Last question read by the reporter.)

Mr. LYON.—That question is objected to as involved; I do not quite understand it myself. [263]

Q. (By Mr. ACKER.) Is there anything about that question you do not understand, Mr. Knight?

Mr. LYON.—Necessarily he don't know anything except what the figures show about the condition of the machines; when the photographs were taken, he was not there. Now, if it means the second time, I don't understand the question myself.

Mr. ACKER.—I asked on his first visit, and I am asking about that now.

Mr. LYON.—Not this question.

The COURT.—Objection overruled.

Q. (By Mr. ACKER.) If there is any question I ask you, Mr. Knight, that there is the slightest doubt in your mind as to my meaning, or as to the meaning of the question, please advise me so I can correct it. [264]

A. I can only say that the construction as shown by these photographs is the construction that I saw there, but as to whether all the parts—some of these parts are movable, whether they all occupied the same position when the photographer took the picture, I cannot say.

Q. Did you see the machines in operations?

A. I did not.

Q. Were they installed for operation at the time of

(Testimony of Arthur P. Knight.)

your visit? A. I think one of them was.

Q. Which one?

A. It was, as I remember it, one of the Porterville machines looked to me like it was ready.

Q. That is, it had the appearance to your eye of being ready? A. Yes.

Q. But as to whether that machine was completely installed and in condition for operation, you are unable at this time to state? A. I can't say.

Q. When did you next visit the packing-houses of the defendants wherein these machines were involved? A. I do not recall any other visit.

Q. Then you only made the one visit and not two visits as intimated by counsel during his interruption to my question. There was only one visit made by you? [265]

A. We went there twice during the same day.

Q. Yes. You made two trips to the packing-houses in the one day, and that was November 12th?

A. Yes.

Q. Now, in the defendants' machine how does the sized fruit move from the fruit grader member to the fruit receiving bins?

A. It goes down on the incline bed, and at the same time is carried along by the belt and is obstructed by the guide, so that it is finally delivered to the bin at a point determined by the position of these guides.

Q. That is, it flows downwardly and in a transverse direction relative to the grader element by gravity? A. Yes.

(Testimony of Arthur P. Knight.)

Q. And in its course of travel traverses the surface of the longitudinally traveling carrier and is arrested in its line of travel by a longitudinally disposed barrier, is it not?

A. I wouldn't say it traverses the surface of the carrier; it is carried along with the carrier to the barrier you speak of.

Q. You say it does not traverse the surface of the carrier? A. It travels with the carrier.

Q. Well, what is the width of the carrier?

A. I couldn't give you the exact dimensions; it is several feet, including all of the belts. [266]

Q. Several feet in width?

A. Including all of the belts.

Q. How many belts are there?

A. Well, as I remember it, in the Porterville machine there was a central belt, and then that was in the middle; then one next to that, and then a lower one, which was the lower run of the cull belt.

Q. What was the direction of travel of the several belts with respect to each other?

A. The middle belt, as I remember it, moved in the direction of the grader belt. The next belt—

Q. (By the COURT.) That don't mean anything to me, moved in the direction of the grader belt.

A. In the same direction as the grader belt.

Q. Oh, in the same direction? A. Yes.

Q. Then it moved toward the lower end of the grader? A. Yes.

Q. Now, that is the belts between the rollers?

(Testimony of Arthur P. Knight.)

A. That is the belt between the rollers.

Q. How many belts between the rollers?

A. Well, I don't understand the question, your Honor.

Q. How many belts between the rollers on the side of the machine?

A. Well, there was only one grader belt, and then below that on the table, and the other bed, there were two belts [267] for distribution.

Q. This one belt that run down between the rolls?

A. By rolls, do you mean grading rollers?

Q. Yes.

A. Just one belt below the grading rollers.

Q. Sir?

A. Just one belt below the grading rollers.

Q. No; between them, I am asking.

A. Yes; one belt between the two grading rollers on opposite sides.

Q. And that ran towards the lower end of the grader, and the direction of that belt was towards the lower end of the grader? A. Yes.

Q. Now, on which side of the machine, or the position outside of the roller, how many belt were there?

A. In the Porterville there was two belts, each side of this central belt.

Q. Two belts on the outside of the roller?

A. Well, as a matter of fact, the middle one of those belts was directly beneath the table that carried the grader belt; directly beneath the rollers, therefore.

(Testimony of Arthur P. Knight.)

Q. In what direction did it run?

A. That belt ran in the opposite direction; that is, in fact, the lower run of the grader belt, therefore traveling in the opposite direction. The outer belt, the lowermost [268] belt, the lower run of the cull belt, that followed in the same direction as the grader belt.

Q. (By Mr. ACKER.) Then the belts interposed between the outlets of the grader element and the longitudinally disposed bin traveled in reverse directions; is that correct?

A. One of them traveled in a reverse direction to the other two.

The COURT.—We will take a recess until 2 o'clock.

Whereupon a recess was taken until 2 o'clock P. M.
[269]

AFTERNOON SESSION—2 o'clock P. M.

ARTHUR P. KNIGHT, recalled.

Cross-examination resumed.

(By Mr. ACKER.)

Q. I understood you to testify on direct examination, Mr. Knight, that the member of the Thomas Strain Patent, Complainant's Exhibit No. 3, designated by the reference numeral 36, corresponded in function to the longitudinally adjustable barrier incorporated in the defendants' machines, and in order that there may be no misunderstanding relative to that feature of the Thomas Strain Patent, Complainant's Exhibit No. 3, I will ask you to explain for

(Testimony of Arthur P. Knight.)

the benefit of the Court the action which takes place on the Thomas Strain device when the sized fruit leaves the grade aperture of the runway and the part 36, which I referred to appearing more clearly in figure 11 of the drawing, sheet 1, and also in figure 6, sheet 2 of the drawings of the Thomas Strain Patent.

A. As I said before, the fruit immediately on passing the grading rod 20 encounters the guard 36 and rolls along the guard until it reaches the inclined portion thereof, and then passes to the lower member of the guard, which delivers it to the depressed portion 19 of the belt; it travels along this depressed portions until it is ejected from the belt by the deflector 36-B on the next succeeding [270] guard. I may say, however, in this connection, that the upper guard member 36 is so closed to the grading rod that in effect it forms a barrier practically at the grading rod, so it is not apparent, for example, in referring to figure 9, how an orange large enough or small enough to just pass through between the grading rod and the belt could actually pass this grading opening until it passes beyond the end of this guard member.

Q. Now, as I understand from your testimony, the upper longitudinal extension of the member 36 is situated adjacent to the grading rod in such a manner as to prevent fruit escaping from beneath the grading rod until it reaches the downwardly inclined portion of the said member 36; is that correct?

A. I should say so, on referring to figure 9.

Q. And when the fruit is discharged from beneath

(Testimony of Arthur P. Knight.)

the grading rod, and at a point beyond the sphere of the upper longitudinal extension of the member 36, does it roll by gravity transversely of the carrier belt until it reaches the lower longitudinal extension portion of the said member 36? A. Yes.

Q. Now, when it reaches the lower longitudinal extension of the said member 36, the fruit, as I understand, is carried along by the longitudinally moving carrier? A. Yes. [271]

Q. Now, when it reaches the end—the outer end—of the lower longitudinally disposed section of the member 36, does the fruit then leave the said member and roll by gravity into the bin arranged alongside thereof to receive such sized fruit?

A. No; I take it that it does not actually move until it strikes the deflector 36-B.

Q. Then it is propelled longitudinally by the belt at that time resting in the trough-shaped edge of the belt formed by the trough-shaped end in the lower portion of the downwardly inclined table; is that correct? A. Yes.

Q. Now, it would remain on that belt and not to be removed therefrom by gravity or otherwise until it was carried over the extreme edge of the conveyor belt, if it were not for the deflecting member 36-B; is that correct?

A. That is the way the operation was described.

Q. How?

A. That is the way the operation was described.

Q. Now, in defendants' device the fruit first leaves

(Testimony of Arthur P. Knight.)

the grading member, rolls by gravity transverse to the longitudinally traveling belt until its movement by gravity is arrested by the longitudinally disposed barrier; is that not correct? A. Yes. [272]

Q. Then, as I understand, the fruit is carried by the longitudinally traveling carrier resting against the barrier until it reaches the terminal portion of that barrier, and then rolls by gravity into the bin?

A. Correct.

Q. That is correct? A. Yes.

Q. Now, what induced you to say that the function of the member 36 in the Tom Strain Patent was the same as that of the longitudinally disposed barrier of the defendants' device? [273]

A. I think that I was correct in that statement. The function is the same, as far as that operation of the barrier goes, having left the barrier, the function of the barrier is completed. Then it remains to get the fruit off the belt. In the Porterville apparatus that is done by gravity alone. In the Exhibit 3 it is done by positive ejection by the inclined deflector.

Q. Now, as I understand from your testimony given in response to a recent question, the member 36 of the Tom Strain patent, Complainant's Exhibit 3, acts first as a filler for the grading aperture, and thence its second function is to serve as a barrier and prevent the fruit from going into the bin?

A. At that point, yes.

Q. At any point?

(Testimony of Arthur P. Knight.)

A. As long as the fruit is in contact with it.

Q. And when the fruit is out of contact with the said barrier, it is still prevented by the **construction** of the Strain device from going into the bin until it reaches another member, which positively forces it off; is that correct? A. True.

Q. (By the COURT.) Now, let me ask a question. I don't know whether I understand it or not. In this belt, the belt is flat and is not at angles like this belt here (indicating). The carrier belt is flat. is it? [274] A. In the Porterville.

Q. In this Strain patent, Exhibit 2?

A. The belt is inclined, but it is flat, except for that concavity down at 19, shown in figure 7—figure 9 on the last page.

Q. (By Mr. ACKER.) So the member 36 of the said Tom Strain patent prevents the fruit from going into the bin, which it otherwise would do, and roll therein by gravity, and the carrier belt, by reason of its troughed construction at the outer edge thereof, then receives the fruit and prevents it flowing into the bin until it has been mechanically ejected therefrom; is that correct? A. Yes.

Q. Now, in the Parker device, the fruit, the moment it leaves the end of the barrier—longitudinally disposed barrier—rolls by gravity into the bins automatically, does it not? A. Yes.

Q. There is no means employed to eject it off of the carrier belt? A. Except by gravity.

The COURT.—Now, I want to tell you as we go

(Testimony of Arthur P. Knight.)

along, I don't understand this. I never saw one of them, and I don't understand the drawings.

Mr. ACKER.—If your Honor will turn to figure 9 of the drawings, you will notice that the carrier belt 10 at its [275] lower edge is troughed longitudinally, due to the troughed construction of the lower edge of the inclined table over which it travels. Now, the result is that when the fruit leaves this member 36, instead of rolling by gravity into the bin placed to receive it, it rests in the troughed-shaped—

The COURT.—Come up here, Mr. Acker. You are talking about this. Where is figure 9?

Mr. ACKER.—Figure 9 is on sheet 3.

(Informal discussion at the bench.)

Mr. ACKER.—Now, in the defendants' device, as I understand, the moment it reaches the end of the longitudinally moving barrier rolls by gravity into the fruit-receiving bins in contra-distinction to the construction shown in the Tom Strain patent, where the moment it leaves the end of this member 36, it is still carried forward by the belt until it reaches a mechanical ejector? A. Yes.

Q. Is it your understanding of the structural device, or a structural device built under the Tom Strain patent, that the member 36 is at all times present? A. You mean it might be omitted?

Q. No; whether it forms a part of the invention and constitutes a working part always present in the machine? A. I would take it so from the patent.

(Testimony of Arthur P. Knight.)

Q. You take it so? [276] A. Yes.

Q. Does the upper right angle longitudinally disposed extension of the member 36 serve as a filling stick in the sense in which you employed the term in connection with the device involved in equity suit 2232, and as involved in the Parker modified type of grader which you have testified to?

A. In the sense of the Parker modified type—

The COURT.—Read that question.

(Last question read by the reporter.)

Q. (By Mr. ACKER.) Reverting, Mr. Knight, to this so-called filler stick which you have testified to was employed in the defendants' machine and as disclosed by the photographic exhibits to which you have testified, I understood you to state that that member which you designated as a filling stick, and which you have testified has served to support the longitudinally moving carrier belt from slipping on the inclined surface, would serve to block out or prevent the escape of fruit which might pass beneath the grading section. [277]

Please explain why it is that that fruit would not pass through the grading opening if it was small enough to go through that portion, and beneath that portion of the roller member.

A. This member you refer to, lettered "A," in Exhibit 7 projects somewhat above the bed or table on which the belt runs; therefore, the spacing between it and the roller is necessarily less in width than the space between the body of the table at the grader

(Testimony of Arthur P. Knight.)

opening and the roller, and still more so on account of the enlargement of the roller directly over this part "A."

Q. Now, that space which you refer to is a space of materially less depth than the space which exists between the carrier belt and the grading portion of the rotary wall member for the fruit to escape through, is it not?

A. You mean on account of the enlargement of the roller?

Q. Yes. A. Yes.

Q. Then why it is that fruit which you say might escape beneath the roller adjacent to this so-called filler stick would not escape through the increased area of the discharge outlet?

A. I have in no place referred to this, as I can remember, as a filler stick. I have simply said in some conditions it might serve to prevent the fruit from passing through in case [278] it could squeeze under the roller.

Q. (By the COURT.) The fruit strikes the outlet end of the roller first and then goes to the higher end on this?

A. It strikes the outlet end first, yes.

Q. Then when it got where the roller was thicker, that stick couldn't keep anything from going through; the roller would come closer to the outlet where the fruit went; is that right?

A. I am inclined to think that is correct; at the same time, the point is that the presence of this strip

(Testimony of Arthur P. Knight.)

there would operate as a block independent of the difference in the size of the roll; they both co-operate towards that same end.

Q. (By Mr. ACKER.) What is the length of the roller section, Mr. Knight?

A. What is the total length of it?

Q. The roller section which contains the sizing portion for the escape of fruit.

A. You mean the grading opening?

Q. The roller section.

A. The total roller, my recollection is, it is about three feet.

Q. About three feet; and where is this so-called filler stick located relative to the roller, at which end and at what distance remote from the outlet for sized fruit?

A. It begins at the outlet and extends to the farther end. [279]

Q. What is the length of the outlet or reduced section of the roller member for the escape of the sized fruit? A. 10 or 12 inches.

Q. Then is it your understanding that this so-called filler piece extending from the end of that portion, the reduced portion of the roller member to the other end of it, making a distance of approximately 21 inches, or 22 inches in length?

A. That is my recollection of it.

Q. And your testimony is based on your assumption? A. Yes.

Q. What is the width of the carrier member; that

(Testimony of Arthur P. Knight.)

is, the longitudinally movable carrier member of the Tom Strain Patent, relative to the width of the carrier member of the Fred Stebler Patent, Complainant's Exhibit No. 2, if you know?

A. I have never seen the Tom Strain machine, so I couldn't give any opinion on that.

Q. Is your idea of these grading machines sufficient to enable you to approximate as to what the width of a belt of the Tom Strain device would be from the disclosure of the letters patent?

A. The only thing I have to go by, the representation of an orange, and it shows oranges between the sides of the other.

Q. And doesn't the Tom Strain Patent, Mr. Knight, more [280] particularly in figure 7 of the drawings, illustrate the carrier belt as extending the entire width of the bed over which it travels?

A. Yes.

Q. And how does that compare with the width of the carrier belt in the Stebler device of Complainant's Exhibit 2?

Mr. LYON.—That is objected to as indefinite; there are two belts. Do you mean the conveyor belt?

Mr. ACKER.—I have reference, Mr. Lyon, to the conveyor belt, and believe I so specified in my questions. If I did not, I will so state to the witness.

Mr. LYON.—Of the distributing apparatus?

Mr. ACKER.—The carrier belt for receiving the fruit after it is sized by the grading member.

The COURT.—After it is sized?

(Testimony of Arthur P. Knight.)

Mr. ACKER.—Yes, your Honor, after it leaves the grading member.

The WITNESS.—The same thing is true in the Stebler Patent. [281]

Q. And from your knowledge of an apparatus constructed in accordance with the Stebler device, what is the approximate width of that belt?

A. My memory is not good for dimensions, and I should say it is about—anywhere from 4 to 6 feet.

Q. How is that?

A. The total width anywhere from 4 to 6 feet; I don't remember it.

Q. I understood you to testify, Mr. Knight, by reference to the photographic exhibits before you that if the nuts appearing—which you say are disclosed in connection with the supporting brackets for the roller member of the fruit grader in Complainant's Exhibit Number 4 were loosened, the sizing roller could be adjusted relative to the belt to vary the grade outlets for different sized fruits, is that correct? A. Yes.

Q. In the Strain reissue letters patent, Complainant's Exhibit Number 1, how is the adjustment of the independently and individually rotatable sizing rolls accomplished?

A. By means of the adjusting S working between the two stop blocks P which screws the bolt—stock blocks R which screws the bolt B in and out so as to move the bracket N, which carries the roller.

Q. As a mechanical expert, do you give it as your opinion that the releasing or loosening of the nuts

(Testimony of Arthur P. Knight.)

D', appearing [282] in connection with the supporting brackets illustrated by photo print, Complainant's Exhibit Number 4, so that the roller section member may be raised toward or from the endless carrier belt, was the mechanical equivalent of the adjusting means disclosed in the Bob Strain patent, Complainant's Exhibit Number 1, for adjusting the independent rolls relative to the carrier member, or the opposing member of the runway.

A. Will you give me that?

(Last question read by the reporter.)

A. The releasing of these bolts or nuts and the sliding of the two parts of the bracket on one another or the upper bracket on the support, is, in my opinion, the equivalent of the adjustment in Exhibit Number 1.

Q. (By the COURT.) Now, show me what—this thing here is called D' in this photograph.

A. These bolts slide right up.

Q. Now, that is the mechanical equivalent of what?

A. Of this part here. This nut and bolt, sliding that around, moving that in and out, simply two different ways of moving the adjustment of the roller.

Q. That is called P? A. P is the bolt.

Q. S is the nut? A. S is the nut.

Q. And you would adjust that nut— [283]

A. Turn that nut and adjust that bolt in and out and move the end of the roller.

Q. That is the same as the mechanical equivalent which produces the same effect as D' in 4—mechanical equivalent?

(Testimony of Arthur P. Knight.)

Mr. ACKER.—One is a mechanical equivalent to the other.

A. Certainly.

Q. Now, if I should secure the nuts or loosen the nuts D' associated with the supporting brackets for the roller members of Complainant's Exhibit Number 2, the roller would fall, would it not, by its own weight? A. Unless you held it, yes.

Q. Then you would have to take your hand and hold it or raise it?

A. Adjust it to the height you want.

Q. Now, in order that there may be no misunderstanding on the record, I understand you to say, as a mechanical expert, that to loosen those nuts, let the roller drop, or support it by your hand from dropping, and then to move it back and forth until you got the proper adjusting position, is the mechanical equivalent of the adjusting means for the sizing rolls of the Bob Strain reissue, Exhibit Number 1?

A. Absolutely, so far as the operation of those rolls is concerned.

Q. I didn't ask, Mr. Knight, so far as the operation of the rolls. I said the mechanical adjusting means.

A. That is the only way I understand it. [284]

Q. That is embraced in your answer? A. Yes.

Q. (By the COURT.) Now, in the center of that figure 1, there seems to be two devices for adjusting. Each one of these rolls has one at each end.

Mr. ACKER.—Each one of those rolls, your Honor, is supported at each end by a bracket, and

(Testimony of Arthur P. Knight.)

each bracket moves in and out.

The COURT.—And you can move either end of it?

Mr. LYON.—Yes; move either end of it. The form of that adjustment, Mr. Acker, which you refer to that moves coincidentally is the form of the Rayburn device. [285]

Mr. ACKER.—Yes; if I adjust this end, I move this bracket in, and I move this one in up but there are two bearing brackets in for each roller.

The COURT.—Yes.

Q. (By Mr. ACKER.) From your knowledge as to the operation of the devices constructed under the Robert Strain Reissue Patent, Complainant's Exhibit No. 1, is it or is it not customary in making an adjustment to move the entire roller the length of the roller in and out towards the opposing member of the fruit runway.

A. The ones I have seen, as I recollect it, move bodily.

Q. Just move bodily in the same sense as the rollers on the exhibit in connection with equity suit 2232 are moved bodily? A. Yes.

Q. Have you a copy of the Complainant's Exhibit No. 2, Mr. Knight? A. Yes.

Q. The first Stebler? A. Yes.

Q. In the device of the Fred Stebler patent in suit, Complainant's Exhibit No. 2, the chutes disclosed therein are arranged at a transverse inclination to the longitudinally traveling belt for the sized fruit, are they not?

(Testimony of Arthur P. Knight.)

The COURT.—Read the question.

(Last question read by the reporter.) [286]

A. Yes.

The COURT.—I don't know what that is all about. Show me on that thing what you said.

A. (Indicating to the Court.) These chutes formed by these guides are arranged at a transverse inclination to the traveling belt.

The COURT.—Oh, yes.

Q. (By Mr. ACKER.) Now, how many of those guides does it take to constitute a chute, Mr. Knight?

A. Well, of course, a chute is formed by the space between two adjacent guides.

Q. That is, it takes the two inner walls of two guides to form the chute? A. Yes.

Q. And it is those chutes formed by the two guides which guide the sized fruit from the sizing outlet to the bin into which it is to be deposited; is that correct? A. Yes.

Q. Do means other than these chutes appear in the said Stebler patent for guiding and directing the sized fruit from the grading member to the bins to receive such fruit?

A. Well, there is—in case the belt is inclined, it is gravity which tends to cause it to move; in fact, in lines 88 to 95, page 3 of the patent, it is stated that one of the objects of inclining the conveyor is to cause the [287] oranges to roll without having to rub forcibly against the guiding means.

Q. Are you familiar with the device known as the

(Testimony of Arthur P. Knight.)

Ish grader, and covered by Letters Patent No. 458,-442?

Mr. LYON.—Just a moment. That is objected to as not cross-examination.

The COURT.—I will overrule the objection.

Mr. ACKER.—It is cross-examination, your Honor.

The COURT.—Go ahead. I have overruled it.

Mr. ACKER.—It appears in the patent, your Honor, and forms a part of this patent. This witness has testified he understands the patent.

A. Yes.

Q. You have examined those machines in operation, have you not? A. Yes.

Q. What is the length of the grader of the Ish—known as the Ish or California grader under the Ish patent?

A. As I say, my memory for dimensions is very poor, but as I remember it, it is a very short grader.

Q. Now, what is the length of the bins—that is, the total all over length of the bins that are employed in connection with the Stebler distributing system, and as disclosed by the Stebler Patent, Plaintiff's Exhibit No. 2?

A. With the same qualification, I should say about 40 or 50 feet; that is just a guess. [288]

Q. Well, about 40 feet; and the Ish grader to which he makes reference here, is about 12 feet?

A. 12 or 15 feet, I should say.

Q. Therefore, your fruit receiving bins, under the Stebler patent is extended and projected something

(Testimony of Arthur P. Knight.)

like 28 feet beyond the grading element of the Ish device, is it not?

The COURT.—Read that.

(Last question read by the reporter.)

The COURT.—The Ish device. Now, what is the Ish device?

Mr. ACKER.—The Ish device, your Honor, is what is known as the California grader which has been in litigation in this court, and it is a roller consisting of 9 sections so as to get 9 sizes of fruit, and I have a copy of the patent I was going to introduce in evidence as we go along, and the purpose for which I was asking the witness now, is that the patent refers to that.

The COURT.—Let him answer that.

A. The patent does not show any such disproportion, but the machines I have seen with the Stebler distributor were made with the grader—grading element and are considerably longer than the old Ish machines.

Q. Well, in the graders as constructed by the complainants herein, and which you have examined and seen in operation, how does the length of the grader compare approximately [289] with the length of the bins arranged alongside of the longitudinally traveling fruit carrier, and which are located alongside thereof, to receive the sized fruit? [290]

A. As far as my memory serves me, it is some time since I have seen the machines; I should say it was anywhere from 12 to 15 or 20 feet.

Q. Now, in order that there may be no misunder-

(Testimony of Arthur P. Knight.)

standing when we come to arguing this case regarding the meaning of your testimony, I will ask you to explain what you understand to be the grader element referred to in the Stebler patent, Complainant's Exhibit Number 2?

A. It is that part of the machine which sizes the fruit and delivers the sized fruit at distributed points along a longitudinal runway.

Q. That is, you mean the rotary member of the fruit runway, and which member is adapted to segregate the run of the fruit passing through the fruit runway into a number of distinct sizes of fruit?

A. This rotary member, in connection with the traveling grader.

Q. Yes. I mean is that the entire length of the rotary member. You can consider the grader and have so referred to the grader with that meaning when testifying.

A. You are speaking now of the Stebler machine?

Q. Yes, sir; and does that not hold good as to defendants' machine?

A. Only in this way, that in the defendants' machine there is at the lower end of the machine an idle portion of each roller of a greater diameter which really disables it from [291] any grading operation, so that I would consider that the grading stops with the increased diameter.

Q. You mean the portion of the shaft which extends beyond the last diameter of the—

A. That portion of the shaft and the terminal portion of the last roller, which is of too large diameter

(Testimony of Arthur P. Knight.)

to permit the fruit to pass through.

Q. Now, in the defendants' machine are bins extended beyond the grader?

A. As shown in Exhibit 5 the bins are extended beyond the grader or grading element in that exhibit.

Q. Referring to Exhibit 5, I will ask you to mark by a reference numeral thereon that which you mean in your last answer to be the bins extended beyond the grading element.

A. I will mark it by the letter W.

Q. Now, having marked that portion with the letter W, please show me where it appears on this said photographic exhibit, that it is extended beyond the grader of the apparatus with reference to the one you have marked, Mr. Knight.

A. Well, I have got to go by the machine. This photograph does not show all the parts of the machine; I have got to take this exhibit in connection with other exhibits; for example, exhibit 4.

Q. That is what I thought, and that is why I asked you the question, as it does not appear on Exhibit 5. Now, you will take any one or other or more of the complainant's [292] photographic exhibits and mark thereon by the same reference letter the bins which you have extended beyond the grading element, and which in your opinion are bins extended beyond the grading element.

A. Even on Exhibit 5 it is apparent that this portion of the machine directly over the last bin marked W was not intended for grading, if the grading was to be effected by raising the belt, since the fittings

(Testimony of Arthur P. Knight.)

which are indicated at "I" for the other grading aperture are not present in this portion, but as I have said, I have got to read this photograph in connection with what I know of the construction of the machine as shown in the other photographs, and from Exhibit 2 it is apparent that this last section is in part, at least, occupied by a bar shaft, and a part of the next section is occupied by an idle enlarged roller, so that the construction of the machine, as shown by these two Exhibits 4 and 5, is such that the bin marked W in Exhibit 5 extends in part, at least, beyond the last grading bin.

Q. Now, have you marked on the other photograph the same reference numeral as you placed on the photographic Complainant's Exhibit 4, so we may understand your last answer?

A. Yes; I applied the letter "I" to the Exhibit 5.

Q. Now, you have applied the letter W to Exhibit 5. Now, I ask you to apply the same letter to designate that portion which you say here in Complainant's Photographic Exhibit Number 4, corresponds with the part which you have marked with the reference numeral W in Complainant's Exhibit 5? [293]

A. (Marking on exhibit.) I can only apply the letter W to the extreme lefthand corner of the bin space in Exhibit 4, this being at the left of and beyond the last grader opening. Apparently the partitions were not in place in the bin in this exhibit.

Q. In Complainant's Photo Exhibit No. 4, does reference numeral G which you have placed thereon indicate an outlet for sized fruit, or what does that indicate?

(Testimony of Arthur P. Knight.)

A. It indicates an opening formed in a longitudinal board below the table which carries the grading belt, but it is not strictly a grading outlet.

Q. It is an outlet through which the sized fruit escapes in its path of travel by gravity towards the fruit receiving bin? A. Yes.

Q. Now, with Photo Exhibit No. 5 before you, Mr. Knight, will you explain to me what that portion is which I will designate by the reference numeral W'?

The COURT.—That is in 5?

Mr. ACKER.—That is Photo Exhibit 5.

Q. (By the COURT.) What is it now you are talking about?

A. Right here. (Indicating to the Court.)

Q. That is W'? A. W'.

Q. You mean that aperture there? (Indicating.)
[294]

A. Yes; that is an aperture left in the grading table so that the fruit can pass after it has been graded to the bin, and this portion of the grading table, which is run over by the fruit before it reaches such aperture, forms in effect a distributing means in connection with the conveyor belt to aid in carrying the fruit to the last bin from the comparatively short grader.

Q. (By Mr. ACKER.) Mr. Knight, I didn't ask you about the latter part of your answer. I asked you what that was.

Q. (By the COURT.) Now, is this the upper end or lower end of the grader?

(Testimony of Arthur P. Knight.)

A. Lower end.

Q. (By Mr. ACKER.) Now, is that an outlet opening in the same sense as the outlet opening which you have designated by the reference letter G on Complainant's Photo Exhibit No. 4?

A. It is in the same sense, yes.

Q. Now, what fruit is it that escapes through that outlet?

A. It is the fruit which has been already graded by passing through the last grading opening, and it has been carried forward to that outlet by the longitudinal motion of the belt, and by running along the wall in advance of this opening until it reaches this opening.

Q. You say running along a wall in advance of that [295] opening. What wall have you reference to?

A. The part of the table which is in advance of that opening you referred to.

Q. Does that appear on the photo? A. Yes.

Q. This whole piece you have reference to?

A. Let me show it to you. I marked that T.

Q. Now, am I correct in the understanding of your testimony that the fruit as sized by the grading element flows through these different outlets, one of which you have marked by reference letter W' in Photo Exhibit No. 5, and by the reference letter G in Complainant's Photo Exhibit No. 4, and after passing through there is received on to a longitudinally traveling belt? A. Yes.

Q. How much of the bin which you have referred to and marked by the reference letter W in Com-

(Testimony of Arthur P. Knight.)

plainant's Photo Exhibit 5 extends or is projected beyond the sizing portion of the rotary wall member of the grader?

A. All of the bin W and part of the next preceding bin.

Q. And you know that from your knowledge of the machine as operated?

A. Not as operated, because I didn't see it operated.

Q. And what fruit, if you know, flows into that bin? A. You mean what size?

Q. Yes. [296]

A. I take it that the sizes that run into that bin would be the over large.

Q. That is the overflow?

A. Yes; over large size.

Q. That is, what would be the overflow from the discharge end of the machine ordinarily. It is not one of the sizes included in the nine sizes to which we attempt to size fruit; is that correct?

A. As I understand it, the over large size are marketable from the marketable size.

Q. But is not one of the sizes which ordinarily flows though the sizing apertures?

A. Not that runs through the grading opening.

Q. Now, where is that size fruit taken as regards the series of bins in the Stebler patented apparatus, Complainant's Exhibit No. 2?

A. I take it it would be carried along by the conveyor 10 above the last guide 13 and 12 and discharged into the last bin. [297]

Q. Now, will you please mark on figure 1 of the

(Testimony of Arthur P. Knight.)

patent drawings, Complainant's Exhibit Number 2, by reference letter A, the bin into which that fruit will go over the reference letter A', the chute which conveys it to that bin. (Witness marks as instructed.)

Q. So that fruit which you have referred to is carried for quite a distance beyond the terminal end of the grader proper, and there is interposed between that particular bin and the terminal end of the grader proper a series of bins for receiving sized fruit; is that not correct, Mr. Knight? A. Yes.

Q. And that is your understanding of the construction and operation of the complainant's device of Patent Exhibit Number 2?

A. If you mean by that its construction and operation would necessarily be limited to having a series of bins, no.

Q. I didn't ask that, Mr. Knight, no; I asked you if such was your understanding of the construction and operation of the machine as you have seen it in operation and constructed? A. Yes.

Q. Mr. Knight, is there any provision made in this Stebler patent by which these so-called partitions which form the chutes may be arranged directly parallel with the longitudinal traveling carrier belt for the sized fruit? A. No.

Q. Now, referring to these photo exhibits once more, [298] Mr. Knight, I will ask you to state if you know by whom the barrier pieces of the defendants' device were removed from their longitudinal position and placed at an incline transverse of the

(Testimony of Arthur P. Knight.)

longitudinally traveling belt, so as to form what appears in the said Photo Exhibit Number 5 as a chute for directing the flow of the fruit into a fruit receiving bin? A. I don't know.

Q. Did you examine the machine prior to its being photographed? A. Yes.

Q. Were the barrier strips arranged in that position when you first examined the machine?

A. No.

Q. They were not? A. No.

Q. Then after your first examination of the machine, until your second examination, or did you make it afterwards and see the strips—the barrier strips placed in that position?

A. The only thing I can say as to that is while we were examining the machine a great many of the barrier strips were not in position at all, and just to satisfy ourselves we put some of them on obliquely to see whether they could be made to put on obliquely with the same fastening devices; we saw they could. As to when that particular adjustment was made, I cannot say. [299]

Q. After satisfying yourself you could mutilate, so to speak, and arrange the barrier placed in this convenient position, a photograph was made of it for the purpose of this case, is that correct?

Mr. LYON.—That question is objected to as not cross-examination and assuming facts not shown by any of the testimony.

The COURT.—I think you had better frame your question in a different way.

(Testimony of Arthur P. Knight.)

Q. Did you arrange those cleats that way for the purpose of photographing it?

A. No; I didn't arrange them.

Q. Who did? A. I don't know.

Q. (By Mr. ACKER.) Do you know whether they were arranged for that purpose? A. I do not.

Q. Now, even when they are arranged in that position, what function would they perform, or, rather, what useful function would they perform relative to the gravity flow of the sized fruit from the grader into the bin which was to receive that sized fruit?

A. As arranged in the photograph, only one of these could apparently serve any useful function; that is the middle one which would serve to direct the fruit forward.

Q. But even in that position, would it form a chute in the [300] sense as the chute is formed in the complainant's patent Exhibit 2?

A. Not by itself, but if two of them were put in similar positions, one after the other, they would form a chute.

Q. And you believe such an arrangement could be made of those barriers? A. I certainly do.

Q. Now, when they were so arranged, the fruit would flow by gravity into the bin, would it not?

A. If they were both extending obliquely forward—transversely inclined, as you call it, in the direction of the conveyor belt, they would tend to drag the fruit forward into the bin.

Q. What is the width of those barrier strips or pieces, Mr. Knight?

(Testimony of Arthur P. Knight.)

A. Oh, I should say perhaps 15 inches, maybe.

The COURT.—Were they of different lengths?

Mr. ACKER.—No, your Honor.

The WITNESS.—All the same length.

Q. (By Mr. ACKER.) All the same length. Now, what is the width of the inclined table over which the belts travel?

A. Well, from the center to each side I should say it would be anywhere from 18 inches to 2 feet a piece.

Q. Then you believe you could take these 14-inch strips and you can place them at any angle you want and still take the fruit over that table from the sizing position of the rotary wall member into its proper position in the bin? A. No, sir. [301]

Q. How?

A. No, sir; that wasn't my idea. The fruit has first to pass over the upper conveyor, which is inclined, and it runs down against that wall, which we see in the exhibits. Then it passes through that opening and from there out to the outer edge of the belt. It is not—where is the exhibit? (Receiving exhibit from Mr. Acker.)

Q. (By the COURT.) Would the strips obliquely to the belt perform any different function than what they would perform longitudinally to the belt? Wouldn't it form the same thing exactly?

A. In final results, yes, because when you put them obliquely gravity aids in carrying it down across the belt, while guided by the chute, whereas, if you put them longitudinally, it is an intermittent action to the barrier, along the barrier, and then by

(Testimony of Arthur P. Knight.)

gravity again to the next barrier, and then off the belt; the final result is the same.

Q. (By Mr. ACKER.) Did you find in your examination of the machines which you examined at Porterville any means which could be arranged obliquely to the path of travel of the belts and by which the sized fruit could be conveyed at a distant point from the discharge end of the machine, and by distant point I mean a point approximately the same distance remote from the discharge end of the machine as is disclosed in the Stebler patent, Plaintiff's Exhibit 2? [302]

A. Not such a great distance, no.

The COURT.—Now, let's see, Mr. Witness. Are there two belts on the outside of the roller on each side?

Mr. LYON.—You have a sketch of that, haven't you, in your pocket?

The WITNESS.—I have.

Mr. LYON.—Produce that, and that will answer the Court's question.

Q. (By the COURT.) Take Exhibit 5—Oh, well, let it go. I will find that out. I suppose you will come to it.

A. There are two belts in this machine, one inside of the lines of the rolls and two outside of the wall, one directly under the wall and two out; those outside ones are shown very clearly in exhibit 5.

Q. They both run towards the head of the machine, both of those belts?

(Testimony of Arthur P. Knight.)

A. The inner one. The upper one runs toward the head; the lower one runs toward the foot.

Q, (By Mr. LYON.) You have a sketch you made of that the time you were up there?

A. Yes, sir.

Q. Does that show the relation of those particular belts on the Porterville Citrus Association machines?

A. It shows the relation of these belts to the grading element. [303]

Q. Will that answer the court's question?

A. Yes.

Q. Produce that now and show it to the Court.

Q. (By Mr. ACKER.) Is this the sketch, Mr. Knight, that you have just handed me that you claim will elucidate that which the Judge asked you to explain? A. I think so.

Mr. ACKER.—I will offer the sketch in evidence and ask it be marked Defendants' Exhibit "A" on cross-examination.

The COURT.—Let it take the next number. Why call it prime?

Mr. ACKER.—Because I have exhibits in the case that have been marked A.

Mr. LYON.—They have not been offered here.

Mr. ACKER.—You can mark it X.

Mr. LYON.—This is the first exhibit.

The COURT.—He has other exhibits he wants marked differently. I don't care, if he wants it marked that way.

Q. (Mr. ACKER.) With the photo exhibits be-

(Testimony of Arthur P. Knight.)

fore you, Mr. Knight, and which have been introduced in evidence on behalf of the defendant, you will please point out wherein there is illustrated by any of the said photographs deflected means, which, in conjunction with another deflecting device, or means arranged in such a manner as to form a chute or runway, is provided with a telescopic extension.
[304]

A. I do not find any deflecting means with a telescopic extension.

Mr. ACKER.—That is all, Mr. Lyon.

Redirect Examination.

(By Mr. LYON.)

Q. Referring to Plaintiff's Exhibit No. 2, you have marked with the letter A the bin to which the over-sized fruit is delivered.

The COURT.—In 2?

Mr. LYON.—Exhibit 2.

The COURT.—Oh, yes; that is the exhibit marked—Is that the last bin there? (Indicating on the exhibit.)

Mr. LYON.—The last bin marked 11. The last bin at the left-hand side, or at the delivery end.

The COURT.—What have you got that marked?

Mr. LYON.—A.

Q. Now, leading to this bin is only one guide arm or deflector composed of two parts 12 and 13; is that correct? A. Yes.

The COURT.—In other words, there is no chute.

Q. (By Mr. LYON.) In other words, the chute

(Testimony of Arthur P. Knight.)

is composed simply of the bottom side of it in gravity; is that correct? A. Yes.

Q. And that is all true of all these chutes so far [305] as the operative function is concerned, as to the individual chute?

A. I would say that generally speaking both sides of the chute were operative, according to whether the fruit intended to roll or intended to carry along the belt. [306]

The COURT.—Is there a belt along there?

A. Belt number 8.

Q. (By Mr. LYON.) And that would depend to a great extent on the amount of inclination given to the belt? A. It is stated so in the patent.

Q. And if it were a flat belt, it would require both sides of the chute, and when so, no inclination transversely of the belt to cause the fruit to roll off?

A. If it was a flat belt it would require the further slide, as it would have to be forced off.

Q. Now, referring to Plaintiff's Exhibit Number 3, the Thomas Strain patent, on cross-examination you were referred to the flat portion of the distributor belt which held the oranges or other fruit to be carried on the belt until forcibly ejected by the part 36-B. What have you to say with reference to this construction and the necessity of any such part 36-B in case the belt were simply inclined all of its transverse direction and not flattened out on the lower edge?

A. In that case the fruit would simply roll off the edge of the belt as soon as it passed the end of the

(Testimony of Arthur P. Knight.)

lower longitudinal portion of the member 36.

Q. Then that would be in the same identical manner as the fruit rolled off of the defendants' machines after they passed one of the deflectors arranged horizontally on the distributing systems of those machines, would it?

A. It would be the same as when it leaves the last one of [307] these barriers or deflectors.

Mr. LYON.—We offer in evidence in connection with the testimony of the witness a sketch made by Mr. Knight on November 12, 1915, at Porterville, and referred to in his direct examination, and ask the same be marked Plaintiff's Exhibit 10.

The COURT.—I thought Mr. Acker put that in.

Mr. LYON.—No; this is the other one. This is the one that Mr. Knight produced on direct examination; I had not before offered it. That is all, Mr. Knight.

Mr. ACKER.—I have no further questions.

Mr. LYON.—With the exception of the reservation of the right to show the joint construction between the roller sections of the defendants' machines in case we cannot agree upon a suitable sketch thereof, that completes the plaintiff's case.

Mr. ACKER.—Well, we have that sketch now, Mr. Lyon, if you want to examine on it.

The COURT.—In the exhibit number 3, figure 7, Tom Strain patent, there is apparently an orange up in the middle of the thing. What does that mean?

Mr. LYON.—That is up in what we call a cull

carrier, and so forth, on the other machine; it is no part of the grader proper.

The COURT.—Well, proceed with the defense.

Mr. LYON.—Or that may indicate a hopper at the end of the [308] machine from which they first roll down; either one; it is not clear.

Mr. ACKER.—If your Honor please, I wish at this time to offer in evidence on behalf of the defendants certified copy of the file wrapper and contents of the application which eventuated in the granting of United States Letters Patent Number 943,799 to Fred Stebler under date of December 21, 1909, for an improved distributing apparatus, and ask that the same be marked Defendants' Exhibit "A."

Mr. LYON.—I would like, of course, just to reserve the right to inspect these long documents to see that they are complete; there is no objection to them if they are complete.

The COURT.—Let them be marked Exhibit "A."

Mr. ACKER.—I will introduce in evidence a certified copy of the wrapper and contents which eventuated in the granting of the United States Letters Patent Number 775,015 to Thomas Strain under date of November 15, 1904, for improvement in fruit graders and ask that the same be marked Defendants' Exhibit "B."

I offer in evidence uncertified printed copy of United States Letters Patent Number 456,092 granted to H. H. Hutchins under date of July 14, 1891, for an improved sorting machine, and ask that

the same be marked defendants' exhibit Hutchins' patent number 456,092.

The COURT.—That is exhibit 2.

Mr. LYON.—Of course, if the offer is made of this patent, [309] or any other patents of the prior art with relation to the invention disclosed and claimed in plaintiff's exhibit number 1, the same is objected to on the ground that the matter is foreclosed by the decision of our Circuit Court of Appeals in case number 1562, and that both parties are bound by the construction and interpretation therein placed upon the claims 1 and 2 of that patent herein sued upon, and that the defendants cannot show prior patents or prior structures for the purpose of limiting the claims of that suit, [310] or securing any other interpretation than the interpretation thus given by our Circuit Court of Appeals in that case, and in that connection I call your Honor's attention to the decision of a Circuit Court of Appeals for the Seventh Circuit in *Murray vs. Orr*, 153 Fed. 369, which said, "That it is not open to defendants on the question of additional infringement to refer to the prior art, but limit the scope of the invention as we have found it in determining the infringement of the Columbia ladder." In other words, our interpretation is this: That the interpretation to be given to the Robert Strain invention and the claims thereof have been finally determined between the plaintiff and the defendant Parker, who has control, as I said here, of this litigation and is defending it at his cost and expense under con-

tract, and the interpretation and decision in that case is just as binding in this suit, as far as the interpretation of that patent is concerned, as it was in the other, and that we must stand, both of us, upon that interpretation. Of course, this objection, however, will not rule out of this case these patents as they may be urged, if counsel so sees fit, against the alleged infringement disclosed, if they be applicable thereto, in either the Fred Stebler patent, Plaintiff's Exhibit No. 2, or the Tom Strain patent, Plaintiff's Exhibit No. 3, but I want to be understood as reserving that objection to that, as to any offer as to the Plaintiff's Exhibit No. 1, and if the Court does not [311] see fit to rule on that proposition at the present time, why, it may be considered later, and either side may be understood to have an exception to a ruling of the Court whichever way it goes.

The COURT.—I don't think that can be made as an objection to the evidence. I don't know what the courts have decided about that thing.

Mr. ACKER.—There is no decision, your Honor, that will bear out the statement made by counsel. I would be glad to be shown it and read it.

The COURT.—I will overrule the objection.

Mr. LYON.—Note an exception.

Mr. ACKER.—I wish to state, so there will be no misunderstanding, on my part I propose to use the patent references to all purposes to which patent references of anticipatory matters may be used in a patent suit.

Mr. LYON.—To save the time of the Court, it will be understood, so far as the Plaintiff's Exhibit No. 1 and the interpretation of that patent, this same objection is urged to each and all of the prior patents, and to the action of the Court in admitting them, the plaintiff excepts. I do not want to take time to repeat that.

The COURT.—How many of them are there?

Mr. ACKER.—*There quite* a number of them.

The COURT.—Is that agreeable to you, Mr. Acker, to have that stipulation, that he objects to all these patents, [312] and objection overruled and exception entered?

Mr. ACKER—Why, certainly; perfectly satisfactory. I offer in evidence printed uncertified copy of United States Letters Patent No. 247,428, granted H. B. Stevens, under date of September 20th, 1881, for an improved apparatus for sizing oranges and other fruit, and ask that the same be marked Defendants' Exhibit "D."

I offer in evidence printed uncertified copy of United States Letters Patent No. 430,031, granted J. A. Jones, under date of June 10th, 1890, of an improved machine for sorting or sizing fruit, and ask that the same be marked Defendants' Exhibit "E."

I offer in evidence on behalf of the defendants, printed uncertified copy of the United States Letters Patent No. 458,422, granted J. I. Ish, under date of August 25th, 1891, and ask that the same be marked Defendants' Exhibit "F."

I offer in evidence printed uncertified copy of

United States Letters Patent No. 654,281, granted M. P. Richards, under date of July 24th, 1900, for an improved vegetable or fruit separator, and ask that the same be marked Defendants' Exhibit "G."
[313]

I offer in evidence printed uncertified copy of United States Letters Patent Number 465,856, granted December 29, 1891, to H. H. Hutchins, improved fruit and vegetable assorter, and ask that the same be marked Defendants' Exhibit "H."

I offer in evidence printed uncertified copy of United States Letters Patent Number 527,953, granted F. N. Ellithorpe under date of October 23, 1894, for an improved machine for sorting, grading fruit, etc., and ask that the same be marked Defendants' Exhibit "I."

I offer in evidence on behalf of the defendants as against the Fred Stebler patent in suit printed uncertified copy of United States Letters Patent Number 775,015, granted Thomas Strain under date of November 15, 1904, and ask that the same be marked Defendants' Exhibit "J."

Mr. LYON.—That is objected to as needlessly incumbering the record. A copy of that has already been offered in evidence; it is one of our exhibits and the patent sued on.

Mr. ACKER.—Simply my own exhibit as my own defense.

The COURT.—I will sustain the objection.

Mr. ACKER.—I have no desire to incumber the record at all; I am perfectly willing to withdraw it.

The COURT.—When it is offered it gets in the record, so far as incumbering the record is concerned, but I think it is immaterial, but it is already in.

Mr. LYON.—The one in may be considered for all purposes [314] for which another one might be introduced.

Mr. ACKER.—That is all right then. I offer in evidence then printed copies of United States Letters Patent Number 741,928, granted C. Rayburn under date of October 20, 1903, for an improved apparatus for sorting and distributing fruit, and ask that the same be marked Defendants' Exhibit "J."

I offer in evidence printed uncertified copy United States Letters Patent Number 835,805, granted to J. T. Backstrom under date of November 13, 1906, for an improved assorting apparatus, and ask that the same be marked Defendants' Exhibit "K."

I offer in evidence printed copy of United States Letters Patent Number 147,301, granted D. A. and A. B. Banker February 10, 1874, for an improved machine for sorting potatoes, and ask that the same be marked Defendants' Exhibit "L."

I offer in evidence printed copies of United States Letters Patent Number 878,618, granted R. M. Widney under date of May 2, 1905, for an improved fruit grader and separator, and ask that the same be marked Defendants' Exhibit "M."

Mr. LYON.—With reference to what is the last exhibit offered?

Mr. ACKER.—Which?

Mr. LYON.—The Widney patent. The reason for that, it is too late in regard to two of the patents in suit, and I wanted the records to show that it was admitted solely for the purpose of the other one.

[315]

The COURT.—Solely for the purpose of what?

Mr. LYON.—The patent to Widney is too late in point of time to affect the Robert Strain invention, Plaintiff's Exhibit Number 1, or the Thomas Strain invention, Plaintiff's Exhibit Number 3, and it would be irrelevant and immaterial as to those two inventions; therefore I think the offer should be limited—

The COURT.—It is dated after those patents?

Mr. LYON.—Yes.

Mr. ACKER.—Now, if your Honor please, the Widney patent is offered in evidence in connection with the Thomas Strain patent of 1904.

Mr. LYON.—That is objected to on the ground that it is irrelevant and immaterial, having been issued after the issuance of the Thomas Strain patent even, let alone being years after the application for the Thomas Strain patent. The Thomas Strain patent, Plaintiff's Exhibit Number 3, was issued November 15, 1904, and the Widney patent was not issued until May 2, 1905.

The COURT.—I can't see what bearing it would have, unless it would have some bearing on the—

Mr. ACKER.—And in connection with the offer of the Widney patent, I offer in evidence a certifi-

cate of the Commissioner of Patents as to the filing date of the application of the said Widney patent, together with a certified copy of the letters patent attached thereto, and ask that the same be [316] marked Defendants' Exhibit "N," or make it "M," in connection with the Widney patent. [317]

Mr. LYON.—That is objected to on the ground that the certificate in itself is incompetent and not one authorized by law, and not a certificate as to the filing of any given application or applications for letters patent, it being a mere recital and unauthorized certificate, and therefore incompetent; and second, on the further ground that even therefrom it appears that there was no publication or granting of a patent or patenting of the Widney device until after the actual granting of the Plaintiff's Exhibit No. 3, and the same is of no part of the prior art, applications for letters patent being secret and not being public knowledge, and even applications are not competent evidence; and further that it is not pleaded that this man Widney was, in fact, a prior inventor, but the only pleading being on this patent as a patent and printed publication, and therefore the certificate, and even the fact, or alleged fact of prior invention by Widney is not admissible under the pleadings.

Mr. ACKER.—The certificate is filed under and in accordance with section 892 of the United States revised statutes, which provides— (Reading section referred to.)

The COURT.—I understand Mr. Lyon to be mak-

ing the objection it is not a copy; it is simply a certificate as to the existence of a fact.

Mr. ACKER.—This is a record of the United States Patent Office; it is not a copy of the patent which is provided [318] for by the section; it is a record belonging to the patent office. We had this question up once before with Judge Wellborn. Judge Wellborn decided as to the admissibility of such a certificate, and we have had that up with Judge Van Fleet with the same ruling. Mr. Lyon and I tried it out before Judge Wellborn and he admitted them.

The COURT.—What is that?

Mr. ACKER.—Judge Wellborn made the ruling that they were entitled to be admitted as a printed copy of the records of the patent office.

Mr. LYON.—I can explain to your Honor my objection there, and it is that is not a copy of the application; that is not a copy of the file wrapper of the application, but it is simply a recital that man filed some application on that date. Now, whether his application was in the form in which it becomes a patent or not, does not appear for a certainty, and to illustrate that, if, for instance, we took the Plaintiff's Exhibit No. 3 and a certificate of that kind, we find that the certificate would be untrue because in that case we find that the drawings have been changed after the application, and certain corrections made, so that is a recital of the fact that they filed some kind of an application, but not that particular application, and therefore it is

not within the section of the statute that counsel refers to, because it is a recital, and there is no evidence as to what kind of an application the man [319] filed at that time, or what was disclosed in that application. That might be a sufficient proof that he filed some kind of an application for some kind of a patent on the date recited, but it is not any proof that was the application, or anything of that kind, but the further and even more serious objection to the offer is the fact that it is inadmissible totally under the pleadings in this case.

The COURT.—Now, let us dispose of one of these objections at the time. Is there any authority on that?

Mr. ACKER.—I haven't looked up those.

The COURT.—I will take this first sheet here. It is simply a certificate of the application. *It not* an evidence of anything except that the filing is a copy. Now, that is the way it looks to me, and in this copy it says that this application was filed January the 2d.

Mr. ACKER.—That is correct.

The COURT.—Application filed January 2d, 1903, patented May 2d, 1905; that is part of the Patent Office. I don't see that this certificate here has got anything to do with anything except the filing is a copy, and it is simply a certificate of the files.

Mr. ACKER.—It is a certificate; that is a true copy of the records of the Patent Office.

The COURT.—Now, you made another objection. What is it, Mr. Lyon?

Mr. LYON.—The important part of that is that file is [320] no better than the printed copy, and that certificate is absolutely a recital and not proof of the facts. There is no authority—

The COURT.—This is a certified copy of the record of the office. What the weight of it is, is another thing. [321]

Mr. LYON.—The next point of that objection is that it is too late in point of time, and it is not admissible under the pleadings.

The COURT.—What about the pleadings?

Mr. LYON.—He has not pleaded that this Widney is a prior inventor; he has pleaded a patent and publication. Now, the patent and the publication of that is subsequent to our application. Under the pleading he gives notice solely that he relies on the date of the patent as a patent.

The COURT.—You had better get out the pleadings if you are insisting on the objection.

Mr. ACKER.—I am introducing that in evidence showing the pendency of the two applications in the patent office, the application of Mr. Widney pending concurrently with the application of Mr. Strain and filed ahead of the application of Mr. Strain. Now, we want to show by that document the construction which the United States Patent Office places upon these inventions. Here are two devices, two forms of graders, the applications pending in the office at the same time, and in fact the Widney application being a prior application to the Strain; it is true that the Widney patent—

Mr. LYON.—I don't see it in his defense, whatever.

The COURT.—Refer to your pleading, Mr. Acker.

Mr. ACKER.—In the Porterville suit.

Mr. LYON.—You said with regard to the Thomas Strain patent, and that is the bill of complaint in the A-50. [322]

Mr. ACKER.—I will have to point you to the stipulation confining the records on the same testimony.

Mr. LYON.—It is not material as to anything except the—as to the Robert Strain—

Mr. ACKER.—If your Honor please, I am not disposed to waste time on an immaterial proposition. I care not whether the matter is introduced in evidence or excluded, and rather than have an argument on that point I will withdraw the offer to save the objection. We are wasting time over useless propositions. Mr. Colyer, you have a deposition that was taken in Florida, I believe. I think we will save time, under the new rule of being opened and filed. I shall read that first. I don't know what your Honor's requirements are in these matters, but Judge Van Fleet always insists that we read these depositions, and I suppose that is the better policy. It gives the court knowledge of the testimony as we go along.

The COURT.—I think it is sometimes better to state in an ordinary form what the depositions show.

Mr. LYON.—To save the Court's time at the pres-

ent time, inasmuch as these depositions refer to only one branch of your defense, that they be considered read; that is, you name the depositions that you so consider, and then refer to such portions of it as you want when you come to argument. We have got to argue the case. I have no objection to the deposition as a deposition, and as to the application [323] the deposition, it won't be apparent to the Court—

Mr. ACKER.—Are there any objections which you wish to raise that are waived? If there are any objections to be urged against any of these depositions, we will take them up as we go along.

Mr. LYON.—I don't think there is any objection to the testimony.

Mr. ACKER.—We will then consider these depositions read.

The COURT.—I will make an order of the court that all exhibits filed will be considered read. Some of them, at least, have been filed without being read. All papers filed as exhibits will be considered read, so you can file that as an exhibit and consider it read.

Mr. ACKER.—All right. I offer in evidence the deposition taken at Citra, Florida, which has been filed, and will be considered read. Now, I have another deposition also, and the same rule will apply to that.

The COURT.—Now, in regard to these depositions, they may be read upon the argument, and it might take up time and argument that wouldn't otherwise be taken up, but the argument is limited,

so I think you had better go through the depositions now and see what is in them; that is my idea about it. You can choose to do what you think proper.

Mr. ACKER.—Your Honor suggests we read the deposition?

The COURT.—Sir?

Mr. ACKER.—Your suggestion is that we read the deposition? [324]

The COURT.—Either state what is in them or read them.

Mr. LYON.—Of course, my objection in regard to the printed copies of the patent, so far as the Robert Strain patent, Plaintiff's Exhibit 1, applies to these depositions also, and it will be understood I take the same exception, the objection being that it is not admissable to show the prior state of the art for the purpose of limiting the Robert Strain patent, it being already *res adjudicata* between the parties, and so forth. The same objection I will urge in regard to the prior art as to the Robert Strain patent. [325]

The COURT.—Well, I think that objection should be sustained, because I don't know what is adjudicated, unless proven. I mean the objection should be overruled, because I don't think that can be made as an objection to the evidence.

Mr. LYON.—We will take our exception.

Mr. ACKER.—Then I shall start in to read this deposition.

The COURT.—Yes. Do you think you want to read it all?

Mr. ACKER.—They are not very long, your Honor.

The COURT.—All right; go ahead.

Mr. ACKER.—If you are satisfied, Mr. Lyon, to let me put this in a recital form to his Honor, I shall do it and not read the whole deposition.

Mr. LYON.—I am satisfied for you to state the substance.

The COURT.—Yes. The Court can get the better sense out of it.

Mr. ACKER.—This is the deposition, if your Honor please, of a witness taken at Citra, Florida, relative to the prior use, manufacture and sale of a fruit sizer or orange sizer that was patented in the year 1881 to one H. B. Stevens, who is alive at the present time and gave his deposition.

Mr. Stevens testifies that he manufactured and sold an apparatus conforming to and covered by the letters patent, [326] and that that apparatus was adapted for the sizing of oranges. It discloses in the drawing what may be termed a double sizer; that is, a sizer composed of two runways; that is, two fruit runways or gradeways, and that each fruit runway or gradeway is composed of two parallel members; one of the parallel members is composed of a series of end to end pieces arranged throughout the runway, and I think they appear by the reference letter G. Now, the device was set at an incline and the fruit delivered to it at the head or feed end, rolled by gravity through the fruit runway until it reached

the point of proper size to permit the orange to drop through, when it would fall into a bin or box situated there beneath to receive that sized fruit. There were a number of sizes provided in the runway, and the testimony shows that in order to vary the grade outlet for the different sized fruits, that the adjustable member was moved toward or from the opposing member just the same as in this case this roll was moved toward or from the carrier member so as to increase or decrease the outlet area. (Indicating on model on table.)

Mr. LYON.—Counsel is arguing this rather than stating it, because I can't agree that the witness says that is just the same as in this exhibit. He said it was like the drawings and as disclosed in the patent.

Mr. ACKER.—Of course, you knew, Mr. Lyon, that I was simply directing the Court's attention.

[327]

Mr. LYON.—Well, your record there when you read it will look the other way.

Mr. ACKER.—I think, rather than to have interruptions and any misunderstanding, I shall read the deposition, if your Honor please.

The COURT.—All right.

(Mr. Acker thereupon read the deposition of Howard B. Stevens.)

The COURT.—Now, we will take an adjournment until tomorrow morning.

(Whereupon, at the hour of 4:30 P. M., an adjournment was taken until Thursday, July 13, 1916, at 10 o'clock A. M.) [328]

*In the District Court of the United States, for the
Southern District of California, Southern
Division, Ninth Circuit.*

Hon. OSCAR A. TRIPPET, Judge Presiding.

A-44—EQUITY.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

A-45—EQUITY.

FRED STEBLER,

Plaintiff,

vs.

MID-CALIFORNIA CITRUS ASSOCIATION,

Defendant.

A-50—EQUITY.

FRED STEBLER,

Plaintiff,

vs.

PORTERVILLE CITRUS ASSOCIATION,

Defendant.

Reporter's Transcript.

Filed Aug. 8, 1916. Wm. M. Van Dyke, Clerk.
By Chas. N. Williams, Deputy Clerk. [329]

Los Angeles, Cal., Thursday, July 13, 1916,
10:20 A. M.

The COURT.—Stebler vs. Porterville Citrus Association. Proceed.

Mr. ACKER.—At the hour of adjournment yesterday afternoon, if your Honor please, I was engaged in reading the deposition that was taken at Citra, and I had finished reading the deposition of one of the witnesses.

The COURT.—Yes; proceed with the evidence.

Mr. ACKER.—And I might state to your Honor by stipulation entered into between counsel at the time of the taking of these depositions it was agreed that the deposition taken in one case would apply to the other cases; that is, to the case 45 and to the case of Stebler vs. Porterville Citrus Association brought under the Tom Strain Patent, so this deposition applies to all three of the cases. And in order that you may follow this deposition, I shall hand you the photo prints which were introduced in evidence and disclose this apparatus in use in the packing houses in Florida.

(Whereupon, Mr. Acker read the deposition of E. L. Wartmann.)

Now, those depositions, if your Honor please, I will not argue that point now, that will come in the argument, as to the bearing of those and the ma-

chines to which they relate, and the amount of fruit that was handled through those sizes.

The COURT.—No evidence to contradict that?
[331]

Mr. ACKER.—No evidence to contradict a word of that and no cross-examination of the witnesses.

Testimony of John A. Milligan, for Defendants.

JOHN A. MILLIGAN, a witness called in behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ACKER.)

Q. Mr. Milligan, you will please state your name, age, residence and occupation?

A. John A. Milligan; age, 56; residence, Porterville, California; I am secretary and manager of the Porterville Citrus Association.

Q. How long have you been engaged in the citrus industry, Mr. Milligan?

A. Since 1906-7, the winter of 1906-7.

Q. What profession or occupation did you follow prior to such time?

A. Minister in the Congregational Church.

Q. A duly ordained minister? A. Yes.

Q. Are you a member of the flock at the present time?

A. I am a member of the San Joaquin Valley Congregational Ministers Association.

Q. I understood you to state that you were the president at the present time of the Porterville Citrus Association, [332] one of the defendants to the present actions. A. That I am the president?

(Testimony of John A. Milligan.)

Q. Yes.

A. No, sir; I am secretary and manager.

Q. And did you hold that position during the year 1915?

A. No, sir. I held the position five years prior to 1914-15—1914, I believe, June, 1914, when I became secretary and manager.

Q. (By the COURT.) What were you prior to 1914-15?

A. I was president of the Porterville Citrus Association for, I think it was five or six years; I don't remember now.

Q. (By Mr. ACKER.) Mr. Milligan, will you please state whether or not an apparatus was installed by Mr. George D. Parker, of Riverside, California, in the packing-house of the Porterville Citrus Association for the sizing or grading of oranges, and when the said machine was installed.

A. There was a sizer installed last fall—last winter, the fore part of the winter in the house that the Porterville Citrus Association packs fruit in in Porterville, California.

Q. Can you state what time during the fall of the year?

A. I don't remember just the exact time when they began work, but the installation was completed just a day or two before we began our packing-house operations; that is, the final work in the equipment.

Q. You are the John A. Milligan who gave an affidavit in this case for use in connection with the preliminary in [323] junction proceedings?

(Testimony of John A. Milligan.)

A. Yes, sir.

Q. This is the affidavit—

Mr. LYON.—Now, I object, your Honor, on the ground that it is incompetent and not proper procedure. It is an *ex parte* affidavit this party made on behalf of the defendant in this case and could be offered here solely for the purpose of impeachment; nothing else.

The COURT.—What is the purpose?

Mr. ACKER.—This is an affidavit, your Honor, under the rules on file in this court.

The COURT.—Sir?

Mr. ACKER.—This is an affidavit in rebuttal of the affidavits placed on file in this case by the complainant on a motion for a preliminary injunction; it forms a part of the records of this case.

The COURT.—I don't understand we are trying a question of preliminary injunction now. We are trying the case on the merits. They have not introduced any affidavits in evidence. I don't understand that you are relying on any affidavits on file?

Mr. ACKER.—Not at all.

Mr. LYON.—I did not understand that we were permitted to use any *ex parte* affidavits even if they were on file. This is a trial of the case on the merits and not a motion for temporary injunction. We have not offered in evidence or attempted to offer in evidence any of the *ex parte* affidavits. [334]

The COURT.—I don't see the materiality of it, Mr. Acker.

Q. (By Mr. ACKER.) You did give an affidavit

(Testimony of John A. Milligan.)

in connection with the motion for preliminary injunction in this case, did you not? A. Yes, sir.

Q. And the facts set forth in that affidavit were verified by you prior to giving the affidavit?

Mr. LYON.—Just a moment. We object to that question as leading and as calling for a conclusion.

The COURT.—The objection will be sustained.

Mr. ACKER.—Exception.

Q. Mr. Milligan, can you state when the packing-house started into operation for the sizing and packing of fruit in this season of 1915-16?

A. Yes, sir; we packed our first car of fruit on November 20th.

Q. November 20th? A. Yes, sir.

Q. Was November 20th the time at which the packing-house started in operation? A. Yes, sir.

Q. Now, can you state how long before the packing-house started its operation that these machines were installed for the Porterville Citrus Association, and by machines I mean the ones involved in this controversy. [335].

A. Well, just two or three days before; in fact, the final work on the transmission was not completed until the day we started.

Q. I direct your attention, Mr. Milligan, to a series of photographs which have been introduced in evidence on behalf of the complainant, and ask whether they correctly represent the machine as installed in your packing-house, or the packing-house of the defendants, and as placed into operation by said association?

(Testimony of John A. Milligan.)

The COURT.—These photographs were taken November 12th, were they not?

Mr. ACKER.—Yes.

Q. (By the COURT.) When did you say you started up? A. The 20th.

Q. (By Mr. ACKER.) I direct your attention more particularly to the print marked Plaintiff's Exhibit 5.

Q. (By the COURT.) What changes were made in those machines from the time those photographs were taken until the packing-house started in operation?

Mr. ACKER.—I wish to know whether the machines were in that condition at the time they were installed in the house of the Porterville Citrus Association and placed in use.

The COURT.—On November 20th?

Mr. ACKER.—On November 20th.

The COURT.—Yes. [336]

A. No, sir; they were not, and never in operation in that position.

Q. (By Mr. ACKER.) Please state for the benefit of the Court whether in the machines as installed for the Porterville Citrus Association and as used by the Porterville Citrus Association in connection with the sizing of the fruit, whether or not in the said machine there were incorporated therein and formed a part thereof independently adjustable rollers.

Mr. LYON.—That is objected to as leading and calling for a conclusion of the witness, and not for a

(Testimony of John A. Milligan.)

statement of facts, and incompetent and not the best evidence.

The COURT.—It looks to me like, Mr. Acker, it is a conclusion of the witness, asking for an opinion of the witness.

Q. (By Mr. ACKER.) Mr. Milligan, please describe the construction and operation of the rotary wall member of the fruit run-way of the sizer installed for the Porterville Citrus Association and used by the said association for the sizing of its fruit.

A. The construction of the roller system, as I understand you have reference to, is a complete alignment of the roller system from one end of the machine to the other, and not adjustable at the opening ends.

Q. (By the COURT.) You mean by the “openings” where the fruit goes out? A. Yes, sir. [337]

Q. (By Mr. ACKER.) Were the rollers adjustable at any portion of the length of the roller section; that is, the roller members?

A. No, sir; not as far as operation is concerned. They may have been when they installed them, but I don't know of them; no use in the operation.

Q. Please state whether or not during the operation of the said machine your company varied the position of the roller member of the sizing portions of the rotary-wall section during the operation of the machines for varying the size of the outlet openings for the fruit to be sized?

Mr. LYON.—That is objected to; no foundation laid; the witness not having qualified to answer the

(Testimony of John A. Milligan.)

question, and leading.

The COURT.—Objection overruled.

Mr. LYON.—Note an exception.

Q. (By the COURT.) Did you change these rollers while you were operating it?

A. No, sir, never.

Q. Then from November 20th down to the present time they have not been changed? The adjustment has not been changed?

A. No, sir; there was an attempt made by a certain individual to change the adjustment on one for a certain purpose; that is all I know of.

Q. (By Mr. ACKER.) You say an attempt was made by an individual to change it. What do you mean by your last [338] answer?

A. Well, at the time the Court met in our packing-house, a party to this suit, as I understand it, attempted to show by forcing the riveted connections that it was possible to make an adjustment on an independent roller; that is the only time they have ever been touched.

Q. What have you to say as to the possibility of making any such adjustments with the machine as installed and put into operation in your packing-house?

Mr. LYON.—That is objected to as incompetent.

The COURT.—I don't know; if this man is a mechanic, he can testify as to that, Mr. Acker.

Q. (By Mr. ACKER.) You are familiar with the construction and operation of the machines used by the defendants, are you not, Mr. Milligan?

(Testimony of John A. Milligan.)

A. Yes, sir.

Q. Please state whether or not there was employed in the said machine chutes or run-ways for guiding the fruit from the discharge outlets for the sized fruit to bins for the reception of fruit.

Mr. LYON.—That is objected to as calling for the conclusion of the witness and leading, incompetent, and not the best evidence.

The COURT.—I think that is asking for an opinion as to whether these things are chutes or not.

Mr. ACKER.—Well, if your Honor please, I am asking [339] if there were any means—I will modify the question in this way:

Q. What means, if any, were arranged transversely of the traveling belt in the machine used by the defendant and installed at the time you have testified to for conveying the fruit from the discharge outlets to the fruit-receiving bins?

Mr. LYON.—Now, that is objected to as leading and calling for a conclusion; the witness ought to be first asked to describe that portion of the machine, at least, before his attention is directed particularly to an opportunity for denial of the existence of a thing.

The COURT.—Objection overruled.

Mr. LYON.—Note an exception.

A. State your question again.

(Last question read by the reporter.)

A. None whatever; the delivery of the fruit is directly into the bin.

Q. (By Mr. ACKER.) Please state whether or

(Testimony of John A. Milligan.)

not in the machine as installed in your packing-house and as used by the defendant company, whether the bins for receiving the sized fruit extended beyond the sizing or grading member of the said apparatus.

Mr. LYON.—That is objected to as leading, calling for a conclusion of the witness, and not a statement of fact, and incompetent, and not the best evidence.

The COURT.—Please read the question, Mr. Reporter. I [340] don't know whether I understand Mr. Acker very well.

(Last question read by the reporter.)

The COURT.—Objection overruled.

Mr. LYON.—Note an exception.

A. No, sir; they do not extend beyond the sizing apparatus.

The COURT.—Now, let me see if I can't separate that.

Q. The box or bins to receive the fruit, are they longer than these rollers? A. No, sir.

The COURT.—That is the question, isn't it?

Mr. ACKER.—That is the question.

Q. Are you familiar with the sizing and distributing apparatus placed on the market by the complainant, Fred Stebler? A. Yes, sir.

Q. Have you one of those devices in use in your packing-house? A. Yes, sir.

Q. Please state how the length of the grader member, or the rotary member of the sizer compares in length with the length of the bins for receiving the fruit.

(Testimony of John A. Milligan.)

A. I couldn't give you the exact proportion of the distance, but approximately it is about half way, or a trifle over half way of the bin surface.

Q. That is, the grader is approximately one-half of the length of the bin surface? [341]

A. Yes, sir.

Q. Now, in the use of that device, how is the fruit carried from the grader member—grader or sizer member to the bins which are located beyond the grader, or a distance of approximately one-half beyond the grader?

A. By a system of adjustable telescope chutes crossing a movable belt.

Q. How does the fruit, which is discharged in the machine used by the defendant and charged herein to be an infringement, flow from the discharge outlet for sized fruit to the receiving bin?

A. It flows directly into the bins, unless it was obstructed, of course, but it flows directly into the bin.

Q. How does it flow? What causes it to flow?

A. The gravity.

Q. That is, it rolls down by gravity?

A. It rolls down by gravity; yes, sir.

Q. What have you to say regarding the sizing and distributing apparatus which you have in your house and installed therein by the complainant, Fred Stebler, compared with the discharge of the fruit in the machine alleged to be an infringement?

A. That end sizer with its bin system toward the sorting tables, the delivery is practically direct; it

(Testimony of John A. Milligan.)

varies a little, but toward the end, of course, it flows [342] into these channels or chutes and is carried on the surface by this gravity to the bins that are desired to be used for it.

Q. It has been stated by the witnesses produced on behalf of complainant that there was a barrier or barrier pieces incorporated in the defendants' machine. Please state the purpose and function of those barrier plates.

Mr. LYON.—I don't know as the question is definite enough to identify what the witness is interrogated in regard to.

The COURT.—Well, we will find out. Objection overruled.

A. The use that is made of the slats—we call them slats in our house—is simply that when the fruit falls directly from the sizing aperture into the bin, if we have an excess of sizes, any given size calling for a larger bin, the slat is placed parallel to the moving belt, one belt moving one way and the other the other; the slat will be placed in the middle groove so as to distribute the fruit into the bin for which the aperture is made.

Q. (By the COURT.) Awhile ago you said the fruit flowed directly into the bin.

A. I said it flowed directly into the bin; you could obstruct it from flowing directly into the bin; you could put that slat and that would prevent it from flowing directly into the bin. [343]

Q. (By Mr. ACKER.) What would be the object of varying the discharge of the fruit from one end

(Testimony of John A. Milligan.)

of the bin to the other end?

A. That, of course, is simply to secure bin capacity so as to allow a larger number of packers to get around the bin.

The COURT.—I understood your question just as he has understood it.

Q. (By Mr. ACKER.) Mr. Milligan, does the fruit as it flows by gravity into the bin discharge at any given point relative to the bin?

A. Yes; it has to if it flows into the bin at all, it has to flow into a given point.

Q. Now, are these barriers or slats which you have referred to, used at all times in connection with the defendants' device during the operation of sizing fruit? A. Oh, no, sir.

Q. And when are they brought into operation?

A. Well, only as needed, in case of enlarging a bin. For instance, as our 26 size this last year ran heavily, the slats were used only in that instance, or wherever in any bin it was necessary where the bin was enlarged to place the obstruction to distribute properly in the one bin.

Q. That is, to even up the flow of the fruit throughout the bin? A. Yes, sir. [344]

Q. (By the COURT.) You get the same depth of fruit in the bin all over the bottom of the bin; is that the idea of it?

A. Yes; it is to distribute it, to enlarge the bin from two feet or three feet to six feet or seven feet or eight feet, to get the packers around to get the packing space. These slats will enable the fruit to fall

(Testimony of John A. Milligan.)

which way you want into that one bin, instead of directly to that one point, and then form a V-shape—

Q. If it was not for these slats the fruit would pyramid into these bins? A. Yes.

Q. And form a pyramid?

A. If the packers didn't keep it down; yes, sir.

Q. Then you use these slats in order to make it distribute evenly so there will be the same depth of oranges all the way through the box?

A. And obviate the necessity of a man spreading them down by hand.

The COURT.—I think we understand that. There is no conflict of ideas about that.

Mr. ACKER.—No conflict of ideas so far as I am concerned; that is my understanding, to even off or level up the fruit in the bin.

The COURT.—Is that your understanding, Mr. Lyon?

Mr. LYON.—Mr. Milligan also says they adjust the length of the bins from two to— [345]

The COURT.—He has settled that. They make a three-foot bin six feet if they want.

Mr. LYON.—And by these barriers may deliver the fruit from a given opening to any spot in the bin. I don't think there is any dispute in regard to that.

The COURT.—Well, we don't need to waste time on that question.

Q. (By Mr. ACKER.) Was your company a party to the suit instituted by Mr. Fred Stebler against the Pioneer Fruit Company?

Mr. LYON.—It is not claimed that he was.

(Testimony of John A. Milligan.)

Mr. ACKER.—One minute, Mr. Lyon. I simply want to take the testimony.

A. No, sir; we were not.

Q. During the course of the examination of Mr. Fred Stebler he was asked by his counsel the following questions and his answers I read to you. (Reading:) “Q. Subject to that judgment”—meaning the judgment against the Pioneer Fruit Company—“did you settle with the Porterville Citrus Association for the use of any of the type of machines that were covered by that judgment? A. I did.

Q. What machines? A. Machines that they were using in their Plano house. Q. And they took a license for the two or three machines that the Porterville Citrus Association was using in their Plano house? A. Well, since I come to think about it, I think there was another house involved in that, [346] which was the Boydston house, which was also involved in that settlement. Q. And they paid \$188.50 damages on each machine? A. Yes, sir. Q. And in that contract they agreed to the validity of both the Stebler Distributing Apparatus Patent, Plaintiff’s Exhibit No. 2, and the Strain Reissue Patent, Plaintiff’s Exhibit No. 1, claims 1 and 10? A. I believe so. Q. And agreed at no time to further infringe? A. I believe that was part of the basis of the settlement.” I will ask you, Mr. Milligan, what you have to say regarding the correctness of that testimony, or the incorrectness thereof.

A. With regard to the Porterville Citrus Association, I have no knowledge of any such agreement

(Testimony of John A. Milligan.)

ever having been entered into or signed by its officers; I couldn't say on oath that such has not been done, but not to my knowledge.

Q. And to your knowledge did the Porterville Citrus Association ever admit the validity of any patent owned or controlled by the complainant, Fred Stebler?

Mr. LYON.—That is objected to as leading and incompetent; the witness has already said he had no knowledge on the subject whatever.

The COURT.—Objection overruled.

Mr. LYON.—Note an exception.

A. What is the question?

(Last question read by the reporter.)

A. No, sir; not to my knowledge, they never did.
[347]

Q. (By Mr. ACKER.) Please state in what manner the grading outlets for fruit to be sized in the defendants' machine are changed or altered for the purpose of varying the same for a different size of fruit.

Mr. LYON.—That is objected to as incompetent; no foundation laid; the witness not having qualified to answer the question.

The COURT.—Read the question.

(Last question read by the reporter.)

The COURT.—Objection overruled.

Mr. LYON.—Note an exception.

A. The adjustment at the aperture for sizing is made with a metal plate under the belt that is adjustable up and down.

(Testimony of John A. Milligan.)

Q. (By Mr. ACKER.) Is that plate a hinged plate?

Mr. LYON.—I object to that form of the question as leading. Let the witness describe what it is.

The COURT.—Well, I think it is leading, but I will overrule the objection.

A. No, sir; it is not hinged; it is on the same level with the belt but it is underneath, but the idea is that there is no hinged proposition, but it is directly under the belt and it is raised or lowered according to the desired change in the size.

Q. (By Mr. ACKER.) You are familiar with the construction and operation of the complainant's machine—sizing and distributing system as installed—[348]

The COURT.—Of the Stebler machine?

Q. (By Mr. ACKER.) (Continuing.) of the Stebler machine as installed and operated in your house? A. Yes, sir.

Q. Now, I wish to ask, Mr. Milligan, what would be the result in the operation of that machine if the strips forming the guide chutes were removed?

A. Well, the result would be that the machine would be practically useless; it could not be—it would be of no value, practically no value for that purpose. The guide chutes across the movement of the belt is the principal feature of the system to get the efficiency of the machine.

Mr. ACKER.—Take the witness, Mr. Lyon.

(Testimony of John A. Milligan.)

Cross-examination.

(By Mr. LYON.)

Q. You never saw a Stebler grader then without the distributing system and the telescoping chutes?

Mr. ACKER.—The question is objected, if your Honor please, inasmuch as the device to which the question applies must be the device of the patent in suit.

The COURT.—I will overrule the objection.

A. What is the question again?

(Last question read by the reporter.)

A. Not that I know of. You mean the latest constructed—

Q. (By Mr. LYON.) I said the Stebler grader, you know [349] what the Stebler grader is, don't you? A. Yes, sir.

Q. Now, have you ever seen that used without the distributing belt and the chutes along the side of it?

Mr. ACKER.—Have you reference, Mr. Lyon, to the Stebler sizer and distributor which the witness has testified to as having been used in this packing-house?

Mr. LYON.—The witness understands what I refer to, and that is the grader.

The COURT.—I will overrule the objection.

Mr. ACKER.—I am not making an objection. I simply want the record clear.

Q. (By Mr. LYON.) I am referring to the grader proper now, Mr. Milligan, and you so understand it, and I am asking you if you have ever seen

(Testimony of John A. Milligan.)

that grader used without the distributing belt and the chutes. A. No, sir; I have not.

Q. Never have seen it? A. No, sir.

Q. Don't you know whether it would be practical without the distributing belt or the chutes?

A. No.

Q. You don't know whether with simply the bins arranged stationary at the side and below, the grader would be practical?

A. No; because it would cut it— [350]

Q. I ask you if you have ever seen it used that way. A. I told you I did not.

Mr. LYON.—Then we move to strike the testimony of the witness from the record in regard to whether the Stebler grader and distributing apparatus would be practical without the chutes, on the ground that the witness is not qualified to answer the question.

The COURT.—Motion denied.

Mr. LYON.—Exception.

The COURT.—It will go to the weight of his testimony.

Q. (By Mr. LYON.) Who in the employ of the Porterville Citrus Association has charge of the grading operation? In other words, the use of the grading machines?

A. Which grading machines do you mean?

Q. All of them that are in the packing-house there.

A. Which packing-house?

Q. The Porterville Citrus Association.

A. The Porterville Packing House Company?

(Testimony of John A. Milligan.)

Q. Who is the man that is in charge of operating that grading and was this past season?

A. Who was the foreman?

Q. Yes.

A. This past season and the season before, Mr. N. Ofstadt.

Q. You paid very little attention to the mechanical operations of the machines during the past season, did you? [351]

A. I paid very close attention to them.

Q. How long since you have examined the three machines installed in the Porterville Citrus Association packing-house at Porterville to ascertain whether D or any of the nuts D', as shown in Plaintiff's Exhibit 4 have been turned with any degree, whatever, since the ends of the bolts were riveted?

A. Now, read the question.

(Last question read by the reporter.)

A. These two machines—there were only two machines in the house. The examination was made before the acceptance of the machinery at the time of installation, and they were moved then and riveted in the same position in which they are now; I am in the house every day.

Q. You have never examined any of those bolts since then to see whether any of them have been turned since they were riveted down?

A. Yes; I examined one of them.

Q. Only one?

A. Yes; that was the one you moved.

(Testimony of John A. Milligan.)

Q. Have you made any particular examination of those nuts since that time?

A. Yes; I have looked at them all, as far as that goes, in the whole machine.

Q. When? That day?

A. Yes, that day; I examined the one after you were there that day to see how much you moved it.

[352]

Q. You haven't examined any of those nuts?

A. Yes; in a general way. What would be the object of my going and examining a nut; they would think I was nutty.

Q. In 1910, what was the relation of the Porterville Citrus Association with the Plano Packing-House Company, in 1910 and '11?

A. The relationship of the Porterville Association, or rather, the relationship of the Plano Packing-House Company to the Porterville Citrus Association would be the proper way to put it, was simply this: The group of growers, forming the Porterville Packing-House Company, furnishing the packing-house and equipment, leased their building and equipment to the Porterville Citrus Association for use in packing fruit.

Q. And in the summer of 1911 you, as an officer of the Porterville Citrus Association, settled with Mr. Stebler for the use of a grader and distributing system which has been placed in the Plano house by the H. K. Miller Manufacturing Company?

Mr. ACKER.—That question is objected to as incompetent, irrelevant and immaterial.

(Testimony of John A. Milligan.)

The COURT.—Objection overruled.

A. I will be glad to acknowledge my own signature if it is on any paper.

Q. (By Mr. LYON.) Do you remember any of the circumstances in connection with that? [353]

A. Do you wish to know them?

The COURT.—The settlement might be oral without being in writing.

A. Well, if you wish me to give the details, I will.

Q. (By Mr. LYON.) I ask you if you remember anything about it at all, first. A. Sure.

Q. Now, tell us the facts as you remember in regard to that settlement.

A. If the Judge wishes me to give the statement.

Mr. ACKER.—Yes; go ahead.

A. As far as I know in regard to that matter, the Plano Packing-House Company that we encouraged in the work of the association, because we wished to continue their relationship to us as an association, we encouraged them in their plan of building a house and equipping it. The equipment was furnished by Miller and MacIntosh. The work was done entirely outside of my supervision, for I was not at that time connected with the management only as an officer—yes, I think I was at that time president of the board. Mr. Kennedy was the manager, and he conducted the business, and I know this about it, however, that we paid no royalty or penalty to Mr. Stebler, that we were protected by Mr. Miller and MacIntosh, and they took care of that for us.

(Testimony of John A. Milligan.)

Q. (By Mr. LYON.) You are very positive you didn't write any letter to Lyon & Hackley, or Frederick S. Lyon, [354] or Mr. Stebler, or the California Iron Works, in regard to a settlement, and didn't pay any money in settlement at that time?

A. As far as I know, Mr. Lyon; I don't know.

Mr. LYON.—I will ask, in view of the surprise to this witness—I didn't see him in attendance yesterday, that the further cross-examination be deferred until the afternoon session. Otherwise, except on this fact, I don't care for the further cross-examination. I have some records in the office, and I want to confront the witness with them.

Mr. ACKER.—I understand, Mr. Lyon, the cross-examination is completed, except as to these letters?

Mr. LYON.—Letters or other documents.

The COURT.—We will take a recess until 11:30.
(Recess.)

(After recess.)

Testimony of Thomas Strain, Jr., for Defendants.

THOMAS STRAIN, Jr., a witness called in behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ACKER.)

Q. Please state your name, age, residence and occupation.

A. Thomas Strain; I am field manager for the Mutual Orange Distributors.

Q. How long have you been identified with the

(Testimony of Thomas Strain, Jr.)

citrus industry, Mr. Strain? [355]

A. Practically all my life, for the last 22 years working in that line.

Q. I will hand you copies of letters patent which have been introduced in evidence as Complainant's Exhibit No. 3 and ask you whether you are the Thomas Strain to whom said letters patent were issued? A. No; it was my father.

Q. Can you state whether or not a machine was ever built in accordance with the invention of your father, Thomas Strain?

Mr. LYON.—That is objected to as calling for a conclusion of the witness; it is not shown that he has ever read or is familiar with this patent in any manner, or understands it, or is capable of so doing.

Q. (By Mr. ACKER.) Mr. Strain, are you familiar with the device disclosed by the said letters patent?

A. Will you repeat the question, please?

(Last question read by the reporter.)

A. I would like to look at the patent. (Receiving patent and examining the same.) Yes; I am.

Q. Please state the extent of your familiarity with that device.

A. I was working with my father at the time the grader was built and helped build it.

Q. You helped to build the grader of this invention?

A. I helped to build that machine. [356]

Q. And when? What time?

A. It was, I believe, in 1902; the year 1901 or '2.

(Testimony of Thomas Strain, Jr.)

Q. And where was it built, Mr. Strain?

A. In Fullerton.

Q. Did you ever operate the machine after it was built?

A. I had charge of the machine as long as it was in operation.

Q. How long was it in operation?

A. We operated the machine two seasons.

Q. Can you state whether more than one machine was ever constructed or operated?

A. There was never more than one machine in use.

Q. What became of that machine?

A. It was torn down.

Q. Please describe it for the benefit of the Court, What means, if any, were employed in that machine for varying the discharge outlets for sized fruit?

A. There was a small movable stick about 1 by 2 and a piece fastened onto it at an angle to take the fruit off the belt. This was adjustable; you could put it up in part of the bin to take the fruit off.

Q. No; I think you misunderstood my question, Mr. Strain. My question was, what means, if any, were employed for varying the grade outlets for the fruit to be sized, the outlets leading from the fruit runway? [357]

A. There was a lever attached to an upright that run out with the shaft on the end, and to raise it, you raised the shaft from the belt by means of adjustment.

The COURT.—You spoke of this machine as being a grader. Some of these machines have been called sizers.

(Testimony of Thomas Strain, Jr.)

Mr. ACKER.—If your Honor please, in reality, the term “grader” as applied to these machines is a misnomer. These machines size the fruit into different sizes. Now, what we ordinarily term a grader, as used in these packing-houses, is to grade the fruit, and that is done at some point in the packing-house, and then that fruit is carried to the machine to be sized, so the term grader as used in this suit means one and the same thing, an apparatus for sizing the fruit.

Q. Please describe what constituted the rotary wall member of the said grader.

A. It was a three-quarter inch steel shaft.

Q. And what was the probable length of the said shaft? A. About 40 feet.

Q. And do I understand from your testimony it was that shaft which was raised and lowered?

Mr. LYON.—That is objected to as leading.

Mr. AKER.—Was there an objection to that question?

Mr. LYON.—I objected to the leading feature of it. Let the witness tell.

The COURT.—Objection overruled. [358]

A. The shaft was raised and lowered from the belt that traveled onward to give the different—to adjust the outlets for the fruit to pass through.

Q. (By Mr. ACKER.) Mr. Fred Stebler, the complainant in the present action, has testified in connection with that machine that means were employed for raising and lowering the longitudinally traveling belt. What have you to say relative to the

(Testimony of Thomas Strain, Jr.)

correctness or incorrectness of such testimony?

Mr. LYON.—That question is objected to because it is a misstatement of Mr. Stebler's testimony.

The COURT.—I don't like that method of examining the witness, putting one witness up against another, Mr. Acker. Ask the question without referring to Mr. Stebler's testimony.

Q. (By Mr. ACKER.) What means, if any, were employed in that machine for raising and lowering the longitudinally traveling belt?

A. There was none.

Q. Were there any means employed in that machine for adjusting the belt vertically with respect to the rotating sizing or grading rod of the apparatus?

A. No.

Q. What means, if any, were employed in the said machine for controlling the distribution of the sized fruit relative to the fruit receiving bins?

A. There was small pieces of wood about 1 by 2, with [359] an angling piece to draw the fruit off the belt, and that was adjustable, could be moved from one part of the bin to another to evenly fill the bins. [360]

Q. Was that adjustable longitudinally?

A. Longitudinally.

Q. What was the purpose of that adjustable piece?

A. It was to fill the bins evenly, and to distribute the fruit from one part of the bin to another.

Q. Can you say whether or not it would serve to prevent the fruit pyramiding in the bin?

A. It would not prevent it from pyramiding it in

(Testimony of Thomas Strain, Jr.)

the bin, but when you did get one pyramid, you could move this and fill the vacant part of the bin, and in that way get your bins filled all over.

Q. That is, it would even up the distribution of the fruit within the bins? A. Yes.

Q. Could you, or could you not, by said means vary the distribution of the fruit from one bin to an adjacent bin? A. You could.

Q. How was that variation made?

A. By moving this apparatus that took the fruit off the edge of the belt along to some other point in the bin, or to the next bin.

Q. With the letters patent before you, and directing your attention more particularly to figures 6 and 11, and also figure 3 of the said letters patent, can you point out the part which you have referred to, and by means of which you state the distribution of the fruit could be varied relative [361] to the bin?

A. I will have to get this thing around so I will know what end of it I have.

Q. (By the COURT.) What is it that causes the fruit to be distributed in the bins shown in the picture or drawing?

A. I don't know which these are by numbers, but it is this little apparatus on the side here. It is this right here (indicating to the Court).

Q. This one (indicating)?

A. Yes; this right in here is movable (indicating).

Q. (By Mr. ACKER.) You mean this part marked 36-A?

The COURT.—What exhibit have you got?

(Testimony of Thomas Strain, Jr.)

Mr. ACKER.—The Thomas Strain, Complainant's Exhibit Number 3. You will find it in figure 11 of the drawing, 36-A.

Mr. LYON.—I would suggest you allow the witness to tell us this thing. There is the part 36, and the part 36-B, and let him pick it out, as to what it is. Let us see if he knows anything about it.

A. In this drawing here, I would say 36-B—is that B or A—that is B here.

The COURT.—That is B. A. 36-B.

Q. (By Mr. ACKER.) That piece, I understand you to say, was longitudinally adjustable relative to the traveling belt? A. It was.

Q. And I understand you to say that is the piece which [362] you refer to in your testimony as directing the point of discharge of the fruit relative to the bins? A. Yes.

Q. When did you say that machine was built and installed in the packing-house?

A. I believe it was in 1901-2 that it was operated, or thereabouts; I wouldn't say the exact date.

Q. (By the COURT.) 1901 and '2?

A. Yes; along in there. I could—I just got to take it from memory back of this time; along in there.

Q. (By Mr. ACKER.) Can you state whether or not more than one of said machines was ever built?

A. No; there was never more than one machine built.

Q. And that is the machine?

A. That is the machine.

Q. And that was the first machine that was built?

(Testimony of Thomas Strain, Jr.)

A. The first machine and the only machine that was built.

Mr. ACKER.—Take the witness, Mr. Lyon.

Cross-examination.

(By Mr. LYON.)

Q. Are you prepared to state that machine was not first operated in the spring of 1903, and that its second season was not 1904?

A. To the best of my recollection it was about 1902, and I am taking that from memory.

Q. Now, you are a cousin of Robert Strain, are you? [363] A. I am.

Q. And it was after he built his machine in the Benchley packing-house that this one was built, was it? A. I couldn't say.

Q. You don't remember anything about that?

A. I remember that he built a grader in the Benchley packing-house.

Q. You don't know whether this machine like Plaintiff's Exhibit 3 then was built before or after the one that he built in the Benchley packing-house?

A. No; I couldn't say.

Q. Now, did you have any knowledge at all of the making of the drawings for this application for this patent, Plaintiff's Exhibit Number 3?

A. Read the question, please.

(Last question read by the reporter.)

A. I saw the drawings as they were being made.

Q. They were made by a draftsman right from the machine and there in Fullerton?

A. What was that?

(Last question read by the reporter.)

(Testimony of Thomas Strain, Jr.)

A. I don't know.

Q. Well, where was it that you saw the drawings when they were made then?

A. By saying I saw them as they were being made, I mean that at different times when the drawings were presented to [364] my father, he would get them—he got the drawings—my recollection is they were made in Los Angeles here somewhere; I don't know who made the drawings.

Q. Were you present when your father showed that machine to Mr. George T. Hackley and Mr. Edmond A. Strause, for the purpose of making these drawings, and for the purpose of preparing this application for patent? A. I was.

Q. And that was down at the packing-house at Fullerton, wasn't it?

A. They were in the packing-house at Fullerton.

Q. And the application was signed by your father to cover the machine as it was being installed at that time? A. Read the question, please.

(Last question read by the reporter.)

A. I don't know; I suppose it was.

Q. And you saw those drawings at Fullerton on more than one occasion, you say?

A. There was different times the drawings were looked at.

Q. Now, have you any personal knowledge as to why the use of this particular machine was discontinued by your father? A. I have.

Q. That was because it was claimed by Mr. Stebler to infringe the Ish patent, and after the suit of Steb-

(Testimony of Thomas Strain, Jr.)

ler and Gamble against the H. K. Miller Manufacturing Company had been decided in Mr. Stebler's favor, wasn't it? [365]

Mr. ACKER.—The question is objected to as incompetent, irrelevant and immaterial; I don't see that is proper cross-examination. There was no reference to any suits on direct examination of this witness.

Mr. LYON.—I simply want to show—

The COURT.—It would go to show the date and the information this man had in regard to this machine. You asked him where it was discontinued. I will overrule the objection.

(Last question read by the reporter.)

A. It was because Mr. Stebler said it was an infringement on the Ish patent; the rest of the question I couldn't say.

Q. (By Mr. LYON.) And you were still with your father in that packing-house when immediately on us discontinuing the use of this machine he commenced making another grader in which the belts ran flat and had little cross-belts running across to take off the fruit, weren't you?

Mr. ACKER.—I object to that as incompetent, irrelevant and immaterial, if your Honor please, and not proper cross-examination.

The COURT.—Objection overruled.

A. I was.

Q. (By Mr. LYON.) Now, Mr. Strain, you refer to figure 6 of Plaintiff's Exhibit 3; isn't it a fact that in this machine, as constructed by your father and

(Testimony of Thomas Strain, Jr.)

used in your father's packing-house, the part 36, which is near the grade rod 20 kept the fruit from coming out under the grade rod at that [366] portion? (Indicating on the patent to the witness.) I see you hesitate. Are you sufficiently familiar with mechanical drawings to really understand this drawing?

A. This is a view down on this drawing, I can't see how that piece in there—

Q. Look at figure 5.

A. No; it did not.

Q. You are sure it did not? A. Yes.

Q. That was the purpose of that portion?

The COURT.—What portion is it now?

Mr. LYON.—Figure 5.

The COURT.—I know, but what number?

Mr. LYON.—36. And here is the point right in the middle (indicating to the Court.)

A. I would like that question read over again, if it is permissible.

Q. (By Mr. LYON.) Take another look at it if you wish to.

The COURT.—What is the proposition, Mr. Lyon?

Mr. LYON.—Why, that upper horizontal portion of the part 36 did prevent, in the machine, the fruit from running under the grading rod and between the grading rod and the belt where that portion of that part 36 was located, so as to form a discharge outlet at the part 36, which bends down transversely of the belt.

(Testimony of Thomas Strain, Jr.)

The WITNESS.—No; I don't believe it did.
[367]

Q. Are you prepared to say that you thoroughly understand these drawings?

A. Yes; I understand the drawings when I get to look over them and see the different parts there.

Q. Are you prepared to positively state that no portion of the bed upon which the belt moved was hinged? A. I am.

Q. Were you present at any time when your father gave the instructions to either Mr. George T. Hackley or Mr. Edmond A. Strause to show these hinged leaves or portions of the bed plate on which the belt ran, as illustrated in Fig. 7 of Plaintiff's Exhibit 3? (Exhibiting patent to the witness.)

A. Read the question, please.

(Last question read by the reporter.)

A. I might have been present, but I don't remember his giving those instructions.

Q. You have no recollection of that feature at all, have you?

The COURT.—I don't understand what you are talking about—figure 7?

(Mr. Lyon thereupon indicated to the Court on the copy of the patent.)

Q. (By Mr. LYON.) Then you have no personal knowledge of this leaf or adjustment of the grade openings by moving the belt toward or away from the grading rod? A. There was none. [368]

Q. I say, you have no knowledge of that being dis-

(Testimony of Thomas Strain, Jr.)

cussed by your father at all?

A. I know it was discussed, but I know it never was used.

Q. With whom do you know it was discussed?

A. Well, he talked with me about it.

Q. When?

A. At the time we were operating the machine.

Q. And before you made the machine?

A. No; not before we made the machine, to the best of my recollection, but I know at the time we were operating it we were talking about that.

Q. Was that before or after these drawings for this application for patent had been seen by you the first time? A. I couldn't say.

Q. You have no recollection as to when it was then that that feature was first discussed between your father and yourself?

A. I couldn't say as to the time, but it was during the operation of the machine.

The COURT.—Mr. Lyon, I don't see the number 13 in this figure at all.

Mr. LYON.—The number 13 will appear only on Fig. IX, or 9, where it is described in detail. The figure 12 will refer to the table generally.

(Informal discussion at the bench.)

Mr. LYON.—That is all, Mr. Strain. [369]

The COURT.—Any redirect, Mr. Acker?

Mr. ACKER.—No, sir.

The COURT.—All right. We will take a recess then until 2 o'clock.

Whereupon an adjournment was taken until 2 o'clock P. M. [370]

(Testimony of John A. Milligan.)

AFTERNOON SESSION—2 o'clock P. M.

The COURT.—Call your next witness.

Mr. LYON.—Recall Mr. Milligan, and I will finish with him in just a moment.

**Testimony of John A. Milligan, for Defendants
(Recalled).**

JOHN A. MILLIGAN, recalled.

Cross-examination (Resumed).

(By Mr. LYON.)

Q. Mr. Milligan, I show you letter dated Porterville, California, October 12, 1911, and ask you if that is your signature attached thereto (handing paper to witness). A. Yes, sir.

Q. You dictated that letter to the firm of Lyon & Hackley in reference to the settlement of the infringement by that company and the Plano Packing House Company, as referred to, did you?

A. Just a moment until I read the letter, if you please. (Reading letter.) Yes, sir; I wrote the letter in Mr. Kennedy's absence while he was there.

Q. And the facts as therein stated were true at that time?

A. As far as I know; there is nothing stated, to my point of view, that is definite.

Mr. LYON.—Oh, no. We offer it in evidence as Plaintiff's Exhibit 11.

Q. I also show you a postal card dated Porterville— [371]

The COURT.—Now, is that letter going to be read?

(Testimony of John A. Milligan.)

Mr. LYON.—Just a moment. I will read the two of them together.

The COURT.—You had better read it now.

Mr. LYON.—The letter exhibit 11 is as follows, letterhead of Porterville Citrus Association, dated Porterville, California, October 12th. (Reading:) “Lyon & Hackley,

Los Angeles, Calif.

Sirs: Your letter of the 9th inst. received. Our Manager Mr. Kennedy is at present in the south. In answering for him, I would say that your information concerning the Porterville Citrus Association being responsible for any infringement upon the rights of Mr. Stebler is in error. We have no machinery in our houses at Porterville that can be affected.

With regard to the Plano Packing House Co. and the Boydston House at Worth, in whose houses we pack fruit, if there is an infringement there, as evidently there is, the matter will be attended to at once. Nothing has been done here for the reason that the matter was in the hands of the attorneys at Los Angeles who were to effect a settlement.

Please let me know at once the basis of the satisfactory adjustment you propose. As we are to use the machinery of the Plano House we are interested of course to see that the thing is attended to promptly. [372]

Yours truly,

THE PORTERVILLE CITRUS ASS.
JOHN A. MILLIGAN, Ast. Mgr.”

(Testimony of John A. Milligan.)

Mr. ACKER.—That is not the letter relating to any machinery involved in this suit, is it, Mr. Lyon?

Mr. LYON.—No; that is a letter in regard to these 1910 and '11 machines, which as Mr. Stebler testified, were paid for and the license contract entered into by which they agreed to recognize the validity of the two patents, Plaintiff's Exhibits 1 and 2, and not to infringe thereon.

Q. Now, I show you a postal card dated Porterville, California, October 15, 1911. That is in your handwriting (handing postal card to the witness).

A. Just let me see. May I read it?

The COURT.—If it is in your handwriting, let him read it aloud, and then we will all know what it is.

A. Yes; it is.

Mr. LYON.—It reads as follows: "Lyon & Hackley, Los Angeles, Cal. Gentlemen: I interviewed a representative of the board of the Plano Packing House Co. today. He informed me that the amount due Stebler will be forwarded to you at once. Truly yours, Porterville Citrus Association, by J. A. Milligan."

We offer this card in evidence as Plaintiff's Exhibit 12.

Q. Do these cards refresh your recollection, Mr. Milligan, in regard to the fact that the sum of \$377 was paid in [373] settlement for those two machines?

A. Just to the extent that we did not pay any of it at all.

(Testimony of John A. Milligan.)

Q. You mean personally, or the Porterville Association as an association?

A. The Porterville Citrus Association did not pay it, only just as appears there. I transacted the business as an accommodation for the manager who was away.

Q. And the sum, however, of \$377 was paid so as to clear your company in the use of those machines?

A. I know nothing in regard to that definitely, no, sir.

Q. You have no personal knowledge of the matter any further than set forth in these letters and postal cards?

A. And the general situation, there was a suit on those things, that is all.

Mr. LYON.—That is all.

Redirect Examination.

(By Mr. ACKER.)

Q. Is or is not the Porterville Citrus Association identified with this Plano Company which was involved in the suit with Mr. Stebler?

A. There was no connection, whatever, as far as I know.

Mr. ACKER.—We move to strike from the record all evidence in regard to the so-called Plano suit which was involved, no identity of interests between the Porterville Citrus Association and the said house.

Q. (By Mr. LYON.)—Well, during the time your Porterville Citrus [374] Association, as you stated

(Testimony of John A. Milligan.)

in this letter, were leasing those two houses, weren't you? A. The date was in October?

Q. Yes.

A. That was only a prospective lease at that time.

Q. And you did lease them as a result of this settlement? A. No; nothing like that.

Q. This settlement was made so you could use those machines in those houses the succeeding season?

A. So far as we were concerned, we didn't know anything about the settlement of the suit on that basis. We rented the house the following season.

Mr. LYON.—We submit the motion on the record.

The COURT.—The motion will be denied.

Mr. LYON.—That is all, Mr. Milligan.

Testimony of Charles F. Brookhart, for Defendants.

CHARLES F. BROOKHART, a witness called in behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. ACKER.)

Q. Your age, residence and occupation, Mr. Brookhart?

A. Riverside; age is 41 years; occupation, machinist.

Q. Have you ever heretofore appeared in court as a witness? A. I have not.

Q. Where are you employed at the present time, Mr. [375] Brookhart?

(Testimony of Charles F. Brookhart.)

A. George D. Parker's machine works, Riverside, California.

Q. Are you familiar with the machine which was manufactured by Mr. Parker and installed by Mr. Parker for the defendant to the present action?

A. Yes, sir; I am familiar with that machine; I made the drawings for it and supervised the construction of it and saw it in operation.

The COURT.—A little louder, please.

A. I made the drawings of the machine and was superintendent of the construction of it, and was there after it was in operation, and saw it in operation.

Q. (By Mr. ACKER.) Please describe in your own language the construction of the rotary wall member which forms one of the parallel members of the fruit runway of the said machine?

A. The rotary wall member is composed of sections forming a continuous roll member from one end of the machine to the other, mounted on bearings, running by power applied to one end; it is in continuous rotation.

Q. Please state whether or not any provisions were made in connection with the said rotary wall member for flexing the same at points throughout its length, or for varying the position of any section thereof.

Mr. LYON.—That is objected to as leading and calling for the conclusion of the witness, and not for a statement of facts. The witness should be asked

(Testimony of Charles F. Brookhart.)

to explain that structure, [376] and not simply a yes or no question as to whether or not a certain provision was made for doing a certain thing.

The COURT.—It seems to me like the question is leading, Mr. Acker.

Q. (By Mr. ACKER.) Please explain the construction and operation of that rotary wall member relative to the traveling belt for conveying the fruit through the runway of the grader.

A. Well, this rotating wall member is composed of sections, and in each end of each section there is what we call a roller end. This roll end was what we call machined or finished to make or form what we call a bearing, and in this same plate there was a square hole cast, and in the bearing in support of this, which was also machined, on what we call a hub on each side. The bracket comes down and fastens onto the frame, and these rolls were mounted on these bearings and the square shaft was placed in there so as to connect up the two together and rotate the wall member, and this bracket was made in order to give quick and accurate alignment of the roll member in the initial setting up. There was slots cast in this bracket, and after the rotating wall member was lined up the bolts were riveted and made a permanent structure, so there could be no moving of the roll member, or no flexing of that member; no adjustment of that member by means of bolts.

Q. That is, do you mean to say that no adjustment could [377] be given to the rotating wall member after it had been aligned and secured in position?

(Testimony of Charles F. Brookhart.)

A. After it had been aligned up with the traveling member and secured in position, there was no adjustment made on that member.

Q. How was the grade openings or discharge outlets for the fruit changed or varied during the operation of the machine—adapted to operation on different sized fruit?

A. Well, underneath the traveling member, which was composed of a belt on an inclined table, there is a flat plate which is adjusted toward the roller member at right angles; that is, presents a square surface towards that, and that would be adjusted up and down to change the size of the grade opening of each section of the roll member.

Q. How did the fruit which was sized in the said sizing apparatus move or flow towards the receiving bins adapted to receive any given size fruit?

A. Well, the fruit flowed out of the fruit aperture in a direct line into the bins, but in order to prevent the fruit from piling up in any one point, there was what we call barrier boards interposed to change the point of discharge into the bin and spread the fruit over the bin so it would be even and not overflow on to the floor or on the table.

Q. Where were those barrier boards, as you have termed them, placed relative to the rotating wall member of the [378] fruit run-way.

A. The barrier boards were rotated on the lower table after the fruit was sized by the traveling member in the rotating wall member, and flowed out the aperture down across the table into the bins. These

(Testimony of Charles F. Brookhart.)

boards were placed parallel with that table along the belts to stop the flow of the fruit,—the downward flow, and it changed the point of discharge into the bin.

Q. Approximately what distance did the fruit travel after leaving the grade outlet before coming into contact with these barrier boards as you have termed them?

A. Well, it is about—let me see. I think the first barrier member was about 8 inches from the fruit apertures; there was a slot provided for about 2 inches from the fruit aperture.

Q. How would the sized fruit move or flow relative to the receiving bins if these barrier boards were not employed?

A. Flow directly into the bins by gravity into these bins.

Q. (By the COURT.) You say they would flow directly into the bin, the oranges would?

A. Yes, sir; they would flow right down the table—

Q. Isn't there two belts running down the outside after the oranges get through the sides of the belts?

A. Those belts do not have any effect, or carry the fruit. These tables are inclined at an angle. Unless some barrier is interposed to stop the flow—
[379]

Q. These belts would not have any effect on the direction of the orange at all?

A. Well, practically none, unless there is some way of stopping the fruit on the belt before the fruit would carry.

(Testimony of Charles F. Brookhart.)

Q. (By Mr. ACKER.) How were these barrier boards arranged, transversely of these belts or longitudinally of the belts?

A. They were arranged longitudinally of the belts; there was no other way they could be used and perform the function for which they were intended.

Q. Can you state whether those barrier boards were employed during the normal working of the machine?

Mr. LYON.—That is objected to as incompetent, the witness not having qualified to answer the question. He has not stated how long he was there during the operation of the machine, or that he observed it any length of time.

The COURT.—That is a question of the weight of his testimony. Objection overruled.

Q. (By Mr. ACKER.) Are you familiar with the operation of these machines as employed for the sizing of the fruit?

A. I am; I was present in the Porterville Citrus Association and the Mid-California Company for a week at the different houses, so I saw the operation of the machine and I know how they perform.

Q. I will direct your attention to complainant's photo exhibit number 5, and more particularly to the left-hand portion of the said photograph, and ask you whether these [380] barrier boards are arranged therein in proper position, and as employed during the operation of the machine throughout the sizing of fruit.

Mr. LYON.—That is objected to as leading and

(Testimony of Charles F. Brookhart.)

calling for a conclusion of the witness, and not for a statement of fact.

The COURT.—Objection overruled.

Mr. LYON.—Exception.

A. No, sir; these are not placed correctly; none of them was placed in that position at any time I was in the house. If they were used at all, they were placed longitudinally with the belt.

Q. (By the COURT.) Now, these barrier boards, you say, they are for the purpose of distributing the oranges in the boxes?

A. For the purpose of spreading the fruit evenly in the bottom of the bin so they would not pile up.

Q. Well, they would operate to carry the fruit to the different boxes if put together end to end?

A. No, sir; because you can't run the fruit past the second-grade aperture without getting the fruit mixed.

Q. How is that?

A. You couldn't run the fruit from this particular grading opening past the next one without getting the fruit mixed; you would have to move your bin over to take care of that fruit; the bin boards are adjustable.

Q. That wouldn't be any reason why you couldn't if you [381] have—and you take the first opening under the roller where the fruit comes out?

A. Yes, sir.

Q. Now, couldn't you spread those cleats along so as to carry the fruit into the next box instead of falling directly down into the bin under that opening?

(Testimony of Charles F. Brookhart.)

A. You couldn't carry it any further than the next grade aperture, because the fruit would mix—

Q. I am not talking about whether it would mix or not. Couldn't you do it?

A. You could carry it beyond. You couldn't get any sizing. What I wanted to convey was that.

Q. Suppose you carried the fruit from that box to another one, then you could, couldn't you?

A. If you keep on down the line, you would not have any box left for your last grade.

Q. I see these boards from the picture—have you got 5 before you? A. Yes; I guess it is 5.

Q. Do you see number 4 on there, the figure 4—these boards that run across the belts? What is that projection up over the belt 4? There is a piece on those separating boards that runs up over the belt. [382]

A. Oh, that is a—so the fruit won't run along that belt and get in the wrong bin. That just comes over the top of this belt. That particular belt runs in the opposite direction. At least, it runs toward the lower or tail end of the machine, and as the bins fill up, if they pile up on that belt, the belt just works the fruit along, and it follows it along the edge of that belt, and that projection is to prevent any fruit going over that bin board into the next bin.

Q. You say that belt runs toward the tail end of the machine. Don't it run toward the head?

A. What I mean by the tail end is where the fruit is delivered onto the grader.

Q. It runs toward where it is delivered on the head—that lower belt.

(Testimony of Charles F. Brookhart.)

A. The way this picture is taken, this is the head of the machine over there.

Q. Wait a minute. Don't refer to the picture. Does the outside belt run the same way as the belt between the rolls or the opposite direction?

A. I will have to explain further. We use both sides of the belt. The top of the belt is used to carry the culls back, and the lower part of that belt is used on the lower table, so the top of the belt runs in one direction and the lower in the opposite, but the top of the belt runs opposite to the belt; that member that forms the sorting roll, it [383] runs opposite to that, the top of it, and the lower one runs in the same general direction as that belt under the roller. Both the top and the bottom of the belt is utilized.

Q. Is this projection on these partitions in the bins extended up past the lower belt and onto the second belt? A. Well, I am not just—

Q. It seems to me so in the photograph.

A. The photograph seems to show that, but I am not just clear on that point.

Q. I notice on this photograph it is nailed to the ends of those partitions. Are those partitions fastened firmly in place?

A. You mean these partitions (indicating)?

Q. Yes; the ones in the bins.

A. Those parts that appear to be nails or bolts going through the bracket that supports the bin sides.

Q. Well, can you move those partitions and make the box larger and smaller?

A. Yes, sir; they can be moved.

(Testimony of Charles F. Brookhart.)

Q. How can you move them if they are supported in brackets by bolts there?

A. Well, what we call the bin boards or partitions don't touch that wall at all; there is a casting up underneath this table that moves in a slot, and that board can be slid along in that groove up under the table.

Q. The whole fastening of the board is under the belt? [384]

A. It is just a bracket casting that slides in a groove.

Q. Under the belt?

A. It is under this belt under the table, yes.

The COURT.—Proceed, Mr. Acker.

Q. (By Mr. ACKER.) What is the length of the bins in the said sizer relative to the sizing member thereof?

A. The bins are the same length as the sizer or the grader.

Q. Mr. Knight, a witness for complainant, when questioned relative to the slots which appear in the brackets on the said photographs, stated the only function for those slots would be to permit adjustment for the roller sections of the rotary wall member for the purpose of varying the position thereof. Will you please state whether that is the only function and the function for which those slots were made in said castings?

Mr. LYON.—The form of that question is objected to as leading and suggestive; calling for a conclusion of the witness.

(Testimony of Charles F. Brookhart.)

The COURT.—I don't understand the question, Mr. Acker. I don't know whether the witness does or not.

Mr. ACKER.—I will withdraw the question, if your Honor please.

Q. Please state the purpose of the slots which appear in the bracket castings which support at intervals the roller member of the sizer, said slots appearing—

The COURT.—Now, you can get at that by taking that [385] picture which is marked, where they are marked. It is exhibit 4, and they are marked D', the bolt and slot. That is what you are talking about?

Mr. ACKER.—That is correct, your Honor.

The COURT.—Now, what do you want to know about the bolt and slot?

Mr. ACKER.—I wanted to know as a mechanic, and one who helped to construct that machine, what was the purpose of the slot being made in that bracket?

A. The only purpose of this slot is maintained to get a quick alignment of the bearings to carry the roll sections. It is necessary that these bearings be lined up, or these bearings—the plate that goes in the end where it runs on this bracket bearing would bind that on the bearing, and cause it to cut and wear out, and these bearings must of necessity be in perfect alignment or the roll member will not operate freely, and to maintain that these holes are cast in the slot and the roll member is lined up. The bolts which hold

(Testimony of Charles F. Brookhart.)

these brackets are riveted over after they have attained their alignment so they could not be adjusted.

Q. And as I understand, that was to secure the initial adjustment or aligning of the roller—

A. The roll member with the lower traveling belt member.

Q. And after that additional alignment had been obtained, the bolts were riveted down, as I understand.

A. That is, the nuts were tightened up and the ends of [386] the bolts driven to make that a permanent installation.

Q. What is the purpose of riveting a bolt down onto a nut after a nut has been screwed up to secure a member in place?

A. The only purpose for riveting down is so it can't be loosened up or taken apart. If a man had intended to adjust that, he would have used a jamb nut on there so he could loosen that and tighten it up, and lock it with a jamb nut; that is common practice, and I think that is proven by the mechanical world, according to the great number of inventions that have been made to prevent devices from loosening up, those that are subject to jar or shock.

Q. Is it common practice in mechanics, when you wish to prevent parts from jarring from a set position to first tighten up a nut relative to the securing bolt and then rivet the bolt down onto the head?

Mr. LYON.—That is objected to as leading again.

The COURT.—Well, I think it is leading.

Mr. ACKER.—If your Honor please, that ques-

(Testimony of Charles F. Brookhart.)

tion was asked of Mr. Knight as an expert. Mr. Knight, as an expert, gave that as a definition in mechanics for preventing parts from vibrating or moving loose, and said that was the manner in which they could be prevented from doing that, and I want to know from this witness, as a mechanic, whether that is a common practice.

The COURT.—Well, the objection is overruled with that [387] understanding.

Mr. LYON.—Note an exception.

A. What was the question?

(Last question read by the reporter.)

A. No, sir; that is not common practice, and I have been at the business 25 years and it is new to me.

The COURT.—I don't know whether I understand this thing or not—these bolts—the nuts of these bolts were hammered, as I understand—is that right?

Mr. ACKER.—Hammered; riveted over; upset.

The COURT.—Yes; swell the head of it or the end of it. Now, what is it you are trying to show by this witness?

Mr. ACKER.—By this witness that after those bolts are upset or headed relative to the nut, which tightens up the adjacent parts, that it is impossible thereafter to vary the position of the nuts to permit of any adjustment of the parts relative to each other.

The COURT.—Well, this last question was not addressed to that. It was addressed to a common practice.

Mr. ACKER.—Mr. Knight, the expert for complainants, stated the common practice where you

(Testimony of Charles F. Brookhart.)

wished to hold two movable parts together and prevent them from moving or shifting, due to vibration of the action of the machine; that the common practice was to secure them together with a bolt or nut, and then upset or head or rivet over the bolt, and then afterwards loosen them up again if you wanted to [388] change the adjustment.

The COURT.—I understand.

Q. (By Mr. ACKER.) Mr. Brookhart, have you read and are you familiar with letters patent of the United States, number 527,953, Defendants' Exhibit I (handing copy of the patent to witness) ?

A. Yes, sir; I have read over this patent, and I am familiar with the construction of it.

Q. Please explain the construction of the device; what that device is for.

A. It is a fruit grader—a machine for grading fruit, composed of two parallel members extending longitudinally along the machine, and on these members the conveyor carries the fruit along these parallel members which operate—it is composed of an endless belt on each side. [389] The one on the inside is straight-lined and the one on the outside forms a series of varied openings to vary the size of the fruit, and they are carried around small pulleys on a vertical shaft, and between each of these pulleys are placed adjustable plates. By adjusting the end toward the opposing member and away from it, you change the size of the grade opening. Of course, there are suitable bins for receiving this fruit as it is sized, the regular means of delivering the

(Testimony of Charles F. Brookhart.)

fruit into the machines as far as fruit sizes are concerned.

Q. Please state whether those plates are independently adjustable relative to each other.

Mr. LYON.—That is objected to as leading. I object to counsel leading the witness.

The COURT.—I will overrule the objection. I don't like counsel to lead the witness. I think it depreciates the value of the testimony very much, but I overrule the objection.

A. I thought I said these plates were adjustable between the vertically mounted pulleys, but they are each one individually adjustable towards the opposing member, or away from it, in order to change the grade opening. I meant to say that; I thought when I said it was between the pulleys—of course I see it does not fill the bill, but they are independently adjustable toward the opposing members.

Q. (By the COURT.) Is that these plates under the belt that you are talking about? [390]

A. No; they are plates that support the traveling belt. They are adjustable in and out toward the opposing member for carrying the fruit along the side.

Q. (By Mr. ACKER.) Mr. Brookhart, have you prepared a model of that device? A. Yes, sir.

Q. Or have you a model?

A. We have a model.

Q. Can you produce that model? A. Yes, sir.

Q. Please do so. Please produce the model. Where is the model?

(Testimony of Charles F. Brookhart.)

A. It is just outside of the door.

Q. Get it please.

(The witness thereupon left the room and returned with the model.)

Q. From what did you prepare the model which you have produced, Mr. Brookhart?

A. We prepared it from the letters patent which we had showing the construction of the machine, modeled after the drawing found in the letters patent.

Q. Now, with this device before you, will you please explain the operation of the various parts and what constitutes the fruit run-way, and how fruit is propelled through the machine?

Mr. LYON.—Of course, it will be understood we reserve [391] the objection to the model as a model until we have had an opportunity to compare the model with the patent.

The COURT.—What model is this?

Mr. ACKER.—This is the Ellithorpe patent.

Q. Now, Mr. Brookhart, please explain the operation.

A. (Indicating on the model.) This is the fruit run-way. This is one opposing member. The straight member on one side—of course, we have only one shown, one side of the grading apparatus; as disclosed in the patent it has two, or it has four, in fact, or one above the other, but to show the operation of these run-ways and the adjustable plates, and how the carriers are mounted and the conveyor, why, we just show the one side. The fruit is fed in the

(Testimony of Charles F. Brookhart.)

hopper down this run-way, and these are traveling belts toward the end of the machine. The fruit is carried along here, if it does not come through this opening, then the next size larger, and the next size larger, on down. These plates can be adjusted toward the opposing member; in order to change the grading openings here, they are adjustable in the same way.

Q. When one of the plates is adjusted toward or from the opposing member of the run-way, what is produced by such adjustment?

A. It just makes this one aperture smaller. It does not affect any other part of it at all; it is individually adjusted. Each one of these bars makes the different size for [392] the fruit.

Q. That is, the fruit of a certain size, of the smaller size, will go through the first graded discharge outlet of the fruit run-way?

A. Yes, sir; that is the idea. [393]

Q. And the next larger size through the second?

A. The next larger size and on down.

Q. Now, when the fruit is passed through the grade aperture of a particular size, where does it go?

A. It drops into the bins that are provided for underneath the grade openings, or fruit apertures.

Q. Now, are any provisions made in the patent, or disclosed by the patent for any other form of a nonadjustable member of the fruit run-way?

A. I don't believe I understand just the question.

Q. What other means are disclosed by the Ellithorpe patent for forming a fruit run-way other than

(Testimony of Charles F. Brookhart.)

the two parallel plate members which you have disclosed by this model?

A. In the patent they disclose a roller and roll member which is mounted on one side and performs one side of the front run-way. Of course, the adjustment is the same way, from that roll member.

Q. Now, have you provided the model so you can introduce or place in working position the roller which you have referred to, disclosed by said patent?

A. Yes, sir; we have provided to take this one member off and put the roll member on.

Q. Please take that member off and put the roller member on.

(The witness thereupon made adjustments in the model.)

Q. Now, you have removed one member of the fruit run-way? [394] A. Yes, sir.

Q. Now, what would be the operation of the machine with the roller member substituted for the longitudinal plate member which you removed from the apparatus?

A. The roll members revolve opposite from the conveying member or belt and tends to carry the fruit down the run-way into the various grade openings. From the receiving end of the machine the fruit is sized by these same adjustments, which vary the fruit openings, and the size will drop through each—the first size, of course, drops through the first opening and the second through the second opening, and so on down the line.

Q. Now, what function does the rotating wall mem-

(Testimony of Charles F. Brookhart.)

ber perform in the device as you have now arranged it?

A. It would tend to keep the fruit from trying to force itself down through the two members; that is, it revolves away from it; otherwise it would have a tendency to pinch it.

Q. How does that function compare with the rotary wall member of the defendants' device?

A. It functions the same way; the action of the rotating roll is to prevent the fruit from pinching between the two sizing members.

Q. Now, you have, I notice in the model which you have produced, a belt traveling in the run-way. Is that one continuous belt from the feed end of the machine to the discharge end and back, or is it a series of belts? [395]

A. It is an endless belt which travels from one end of the machine to the other.

Q. (By the COURT.) What do they put those wheels in there for?

A. That is to make a series of openings. If you would run that in a straight line, you would adjust this belt to get away from your pulley, so that the weight of the fruit would not dislodge it. In other words, to assort them to accurate sizing so it can't get away from it. If you have no such board on there you would have no control over that belt. It might be up on top of the fruit or down underneath it.

Q. (By Mr. ACKER.) Now. these adjustable members which are arranged in longitudinal succes-

(Testimony of Charles F. Brookhart.)

sion throughout the length of the fruit runway, I understand you to say are individually and independently adjustable relative to the opposing member of the fruit runway, is that correct?

A. Yes, sir; that is correct.

Q. Now, in function and operation, how do the adjustable sections differ or correspond with the adjustable sections in the defendants' device for moving the carrier belt toward or from the opposing member?

A. The function of both devices is the same, because it flexes the member towards the rotating wall member, or away from it, whichever way you want to vary your sized fruit.

Q. And as I understand your testimony, in the Ellithorpe [396] device, and as represented by the model exhibit, the variation in the discharge outlets for the fruit runway is accomplished by flexing the endless traveling carrier member?

A. That is the idea; both devices perform the same function in flexing the belt toward or from the rotating wall member.

Q. I understand you to state that this model was made by you from the disclosures gained from the Ellithorpe letters patent. A. Yes, sir.

Q. Does it correctly represent the said device?

A. Yes, sir; as far as the sizing of the fruit is concerned, it is correct. [397] Of course, we don't make the same shaped hopper, the sizing element—that is, the parallel members, the rotating wall member and the individually adjustable members were

(Testimony of Charles F. Brookhart.)

made from the disclosures in the letters patent.

Q. What have you to say relative to the practicability of such constructed apparatus for sizing fruit?

A. I see no reason why it should not be a practical fruit sizing device.

Mr. ACKER.—I offer the model in evidence, and ask that the same be marked Defendants' Exhibit Model Ellithorpe Patent.

The CLERK.—“N.”

Mr. ACKER.—“I,” I would make it, together with the attachment thereof, which was removed by the witness.

Mr. LYON.—Objected to as incompetent, not the best evidence, and no foundation laid for the introduction in evidence, and not true to the teachings of the drawings or specifications of the Ellithorpe patent.

Q. (By the COURT.) You say it is?

A. Yes, sir; only I said that in the disclosure in the patent it is constructed with two stories and a double sizing element on each side, and we just constructed it with the one parallel run to show the action of the roll members, conveying belt, and the adjustability of the individual plates to retain the sizes of fruit.

The COURT.—Objection overruled.

Mr. LYON.—Note an exception. [398]

Q. (By Mr. ACKER.) Mr. Brookhart, the Judge yesterday asked concerning a sketch of the connections between the roller members of the rotating wall surface. Have you prepared such a sketch?

(Testimony of Charles F. Brookhart.)

A. Yes, sir; I made a sketch. I believe you have it somewhere there.

Q. Is this the sketch which you have reference to? (Handing paper to witness.)

A. Yes, sir; that is the sketch of the bearings and the rotating wall member.

Q. Now, does this sketch correctly represent the manner of connecting the roller members of the rotary wall member of the defendants' sizer, and relative to the bearing bracket therefor?

A. Yes, sir; that bracket represents the bearing, and the casting that is set in the end of the roller. Of course, I have cut the bearing off because I didn't have paper enough to draw it all on, and this is the bearing as it is installed in the defendants' device, with the square shafting in the center connecting the two sections together.

Q. Now, I wish you would mark on this sketch by the reference numerals 1 and 2 the adjacent roller members of the rotary wall member of the defendants' device.

A. You mean the roller members?

Q. Yes.

A. (Marking on the sketch.) This is the plain copy.

Q. (By the COURT.) What do you call that? (Indicating [399] on the sketch.)

A. This is the roll member. This is one end, and this is the small end of the adjacent—

Q. What is it? I don't understand you.

A. Well, this part right here (indicating), this piece in here represents the casting that goes in the

(Testimony of Charles F. Brookhart.)

end of the wood roller, and it is fastened in here with screws. This surface here marked F is the finished bearing surface.

Q. F?

A. Yes; that is the sign we make for castings to be finished, and this is the wood part of it. It is fastened in there with screws, and this casting is chilled; in the making of this square shaft we chill that to prevent wear, and we make it as near the size of the finished shaft as we can in order to get it in, because you can't do any work on a chilled casting, and there is one of these castings on each end of each section.

Q. (By Mr. ACKER.) Now, how are those ends connected together for rotation?

The COURT.—What is this exhibit marked?

Mr. ACKER.—I haven't come to the marking of it. The sketch referred to by the witness is introduced in evidence and marked Defendants' Exhibit "N."

Mr. LYON.—Let me see it. (Receiving sketch.) If I have an objection to the sketch, I will make it in a moment.

Q. (By Mr. ACKER.) Do I understand from your testimony that each of these members of the rotary wall member of the [400] fruit runway is united in that one?

A. Yes, sir; that is correct.

Q. Please state what flexibility or elasticity, if any, is permitted the roller member of the fruit runway when connected in such manner.

(Testimony of Charles F. Brookhart.)

A. There is practically no flexibility of the roller member, because the nature of that bearing requires that be in perfect alignment, and if you flex it any, it tends for that bearing to bind on the bracket member and cause the bearing to cut and wear out, and it must be preserved in a straight line. [401]

Q. And when so connected, what is its action in comparison with the action of an integral roll extended the entire length of the fruit runway?

A. I don't get the kind of a roll you said.

Q. A solid roller or shaft?

A. Well, that practically becomes a solid roller, and it has the action of a solid roller from end to end of the machine, continuous, and by being joined together, because if you take any one section out of there, the balance of the roll would cease to rotate, so, in effect, it is a solid roller rotating wall member.

Mr. ACKER.—You may take the witness, Mr. Lyon.

Cross-examination.

(By Mr. LYON.)

Q. You don't mean to tell us that these machines of the defendants at Porterville, if the brackets holding the roller sections were adjusted by turning the bolts and nuts D', this roller section at that point could not be flexed a quarter of an inch and still the whole roller section rotate in unison perfectly, do you?

A. I would like to have that question repeated to get the sense of it.

(Testimony of Charles F. Brookhart.)

The COURT.—Let us see, Mr. Lyon, if I cannot put that to the witness.

Q. If you will look at exhibit 4, you see the joint A? A. Yes, sir. [402]

Q. Where C and D are joined together?

A. Yes, sir.

Q. Now, if you were to move A toward the belt a quarter of an inch, would that effect the rolling of the members?

A. Yes, sir, that would grip that bearing on what we call the female bearing on the roller end on the male end of the brackets and it would cut itself out.

The COURT.—That is what you wanted, Mr. Lyon?

Q. (By Mr. LYON.) Would an eighth of an inch adjustment do that?

A. My opinion, less than an eighth of an inch adjustment—I wouldn't recommend any adjustment to prevent that bearing from gripping and cutting a bearing and wearing it out.

Q. Now, you designed the same bearings and connections in the roller sections of the machines in the Riverside Heights Orange Growers' Association, the last machines that were put in there, didn't you?

A. I did not.

Q. Are you familiar with those sections and connections? A. I am.

Q. They are practically identically the same connections that are in here, aren't they?

A. No, sir; they are not.

Q. Where do they differ?

(Testimony of Charles F. Brookhart.)

A. The bearing on the bracket end is only a very narrow [403] bearing, so as to allow a little flexibility there.

Q. And so, according to your statement, there is no flexibility, and they can't be flexed at all?

A. That is my statement.

Q. Now, were you present when his Honor, the present Judge, was at these machines in Porterville in December last? A. I was not.

Q. Did you ever try to make an eighth of an inch adjustment of these bearings and measure it up with a grader gauge, and then see if the device would run?

A. Never tried it because there was never any need for it.

Q. Now, as a matter of fact, why then is it that you have to have an adjustable bracket on there at all?

A. You have to get your initial alignment of that roller section with your carrier member which travels beneath it.

Q. Did you ever use in the Parker Machine Works any such adjustable bracket in any grader before this installation, or is this a new form of adjustable bracket which was gotten out for this particular purpose?

A. It has no adjustable bracket at all; it was not gotten out to be adjustable.

Q. What is the purpose then of the slot and connection by bolts and nuts?

(Testimony of Charles F. Brookhart.)

A. Do you want the detailed purpose?

Q. I asked you what was the purpose of the slot there and the bolt if it was not for an adjustment.
[404]

A. Oh, I will tell you. In the first place, these brackets are mounted on the castings. It comes out of the foundry rough; there is no machine work at the point where they are mounted. Any mechanic knows there is more or less distortion in any casting coming out of the foundry unless you machine that and surface it up. We could mount those by drilling holes, but that would require lining up all brackets, marking off the holes and taking it to a drill-press in order to get them correct. [405]

Now, that is one reason. The other reason is by having these slotted holes, if one of these bearings wears out, we could ship one to the shop, put it in place, line it up, tighten up the bolts, and it would be in place and it would require no mechanic to put that up.

Q. Now, all very well. All of that is a matter of adjusting that bracket, two pieces of it, so you get it in the position you want it?

A. The initial alignment.

Q. Isn't that the adjustment of it?

The COURT.—You can answer that question yes or no.

A. No, sir; I don't consider it an adjustment.

Q. (By Mr. LYON.) What is an adjustment?

A. The purpose of it is to raise that up or down.

(Testimony of Charles F. Brookhart.)

Q. Isn't that what you do in order to get that in alignment? Don't you move those two parts in relation for that purpose?

A. Not after the machine is installed.

Q. I am asking you when you install it.

A. When we installed them we lined those up.

Q. And that is by moving those two brackets on the bolts?

A. Yes, sir; we have to line up those brackets.

Q. Now, when that bracket was first designed for this first Porterville job, was it designed to be used just as it is now used?

A. Yes, sir; we had no intention of making any adjustment [406] on the machine after the machine was installed, ready for operation.

Q. Then why did you put on such brackets, the further projection, together with the rod, screw threaded in its lower end, and the nut represented by 4 in Plaintiff's Exhibit 5, such being apparently a lock nut?

A. That was put on there in order that this nut—in case this nut would loosen up, the bearing would not drop out of alignment.

Q. In other words, it was a lock nut?

A. It was to prevent this bearing getting out of alignment.

Q. You found that by slightly riveting the top of the bolts D', you could do away with that lower lock nut?

A. We riveted those so they could not be adjusted.

Q. Answer the question. You found that by riv-

(Testimony of Charles F. Brookhart.)

eting the top of the bolts D' slightly you would not need that lock nut 4; isn't that true?

A. If I remember rightly, those lock nuts were cut off before we riveted them over at all.

Q. Answer the question.

A. I can't say that we found any such thing and be truthful about it.

Q. Why then did you remove the bolts and nuts 4?

A. So there could be no adjustment made of the roller.

Q. Then the intention when you put on the bolts 4 was to [407] leave an adjustment there, wasn't it? A. No, sir; it was not.

Q. Now, the roller side of these Porterville machines terminates 45 inches from one end of the machine, doesn't it? I am not speaking of the shaft; I am speaking of the grading roller as shown, for instance, in exhibit 4, at the left-hand side of the photograph.

A. You mean the grading of the wood section?

Q. Yes; the grading roller. The grade section.

A. Yes; they do not go clear to the end of the machine.

Q. Then, your bin space is extended beyond the length of that grading roller, is it?

A. It is beyond this grading roller; this last roller, but not the complete roller member, because that is a part of it; that is the guiding end of it; that is a part of it.

Q. In that sense I agree with you. Then, you did not mean to tell the court that the bin space of those

(Testimony of Charles F. Brookhart.)

machines was not extended beyond the grading member, did you?

A. I understand that is a complete grading member from one end of the machine to the other, and it is not separate.

Q. Then in your testimony when you refer to a part, you look at it as a thing regardless of what it does, and say it keeps on extending, although part of it may extend there, having no function; is that it?

A. That part has a function. The over size fruit passes [408] into the bins.

Q. Where does the roller part of that, that is, the rod, have any function at that portion as a part of the grader?

A. I don't think it intended to have any function, because the over size fruit passes under that down into the bin.

Q. Then, how much of the end of that is anything more than an extension for convenience to rotate a bearing in the distance?

A. Well, of course, that shaft has no bearing. [409]

Q. That is what I mean, and if you extended that shaft to 100 feet to its bearing, the rest of the 100 feet would be still a part of the grade roller extension as you used the term on your direct examination, wouldn't it?

A. I consider the whole thing one roller grade member, and that is the end of the sizer bin.

The COURT.—In exhibit 4, I think the place you

(Testimony of Charles F. Brookhart.)

are talking about is the mark B.

Mr. LYON.—B, yes.

The WITNESS.—The letter B.

Q. (By the COURT.) Now, you say the over-sized fruit comes out under B? A. Yes, sir.

Q. And drops into the bin?

A. And drops into the bin that is lying between these two brackets.

Q. And is it necessary to have such a space in any sizer?

A. Yes, sir; they must have a space for taking care of this fruit that passes beyond the last size. I don't know the size of the fruit, what these large sizes are, but there is always some that is over-size, and they take care of that in the last bin.

Q. Would you construct one of these machines without having a slot and bolt D'?

A. Well, it would require a great amount of care and labor to do so, because we would have to make gigs. As you [410] understand, the roller member is varied in distance from the conveying member, from an inch and a quarter to an inch and a half from one end of the machine to the other, and that would necessitate in each set of bearings a change in the distance, and each one of those would have to be a different center from the bearings of the whole, and that, of course, would require a set of gigs, and according to my experience in mechanical lines, it would require the machine—the face of the frame on which those brackets is fastened, and the face of the bracket itself, in order to preserve that

(Testimony of Charles F. Brookhart.)

perfect alignment, and to avoid all that expense. Of course, we use this slotted bracket in order to save that.

Q. That slotted bracket only has one motion, doesn't it, the motion up and down?

A. This is all you could get out of it.

Q. Yes. Just one motion.

A. To loosen up those bolts and get the up and down motion.

Q. And give the two motions, forward and back or up and down?

A. Well, we call it up and down because the angle is greater to the vertical than horizontal.

Q. Now, couldn't that same adjustment be made on the frame where that bracket is fastened to the frame?

A. You mean to put the slots in the frame itself?

Q. At the frame roller it is fastened beyond the frame, and couldn't it be adjusted there instead of having two [411] brackets, having one solid bracket and just the solid bracket to the frame?

A. No, sir; that frame forms part of the machine; it sets on the rafter, and there one part of it which supports this lower table, and there is one part that carries the belt conveyor, and there would be no way I know of we could rest that up and down in order to get alignment, because the table is lined up with the casting on the top, and there must be some means of raising or lowering the roller member in order to align it with that table.

Q. There is no way of constructing this roller

(Testimony of Charles F. Brookhart.)

from one end to the other without at the time of constructing it having an adjustable bracket?

A. Some way of adjusting that bracket to line up the roller with the traveling conveyor, yes, there must be some means there, unless, as I say, you take each bearing, mark the hole and drill it and put it in place, and that would require a set of gigs for each set of brackets, and it would cause lots of trouble. If you would break a bracket, you would not know which one they wanted without special instruction, and with the bracket with the slotted hole, we could ship one out of stock and they can line up the roll member and have it ready for operation in a few minutes.

Q. All these brackets are cast in the same mold, are they? A. Well, we have a pattern for it.

Q. That is what I mean. [412]

A. Yes, the same pattern for all of them.

Q. All made the same size?

A. Yes, sir; remembering the distortion is always according to the metal that is put in. There may be a little more shrinkage at one time than another. Of course, that is common to all foundries; that is usual. [413]

Q. (By Mr. LYON.) Now then, again referring to exhibit 5 I hand you, the shaft or belt marked 4 on that, there are two nuts, aren't there?

A. Yes, sir.

Q. Now, why were two nuts used on there, one for a jamb nut and the other for a lock nut?

A. That is the idea, but I believe this picture was

(Testimony of Charles F. Brookhart.)

taken before the installation.

Q. This picture was taken before you turned over the machines to the use of the Porterville Citrus Association, it is true, but you and the Parker Machine Works put those nuts and bolts 4 on there, didn't you? A. We did.

Q. And that was part of this installation?

A. That was installed as part of the installation.

Q. And then you took and removed the nuts and bolts 4, and you just simply riveted the top of the bolts of the same lock nut?

A. Cut that all off entirely so it could not be moved.

Q. Now, what was the purpose of putting lock nuts on that, like the bolt and lock nuts 4 originally?

A. I believe I said a bit ago that it was put on there in case these nuts would loosen up, to prevent that from working away from the alignment.

Q. Then you did rivet over the top of the nuts or bolts D', so as to prevent that pair of bolts from loosening from the jarring of the machine? [414]

A. No. We didn't do that to prevent the jarring loose. If we wanted to prevent it from jarring loose, we would put on a jamb nut, or many of the devices provided for that purpose.

Q. Then you did intend originally when you put on the bolts and nuts 4 to use an actual adjustment of these slotted brackets?

A. I had no intention—

Q. Now, explain to us what your difference in intention of those two jobs was, there was some dif-

(Testimony of Charles F. Brookhart.)

ference mechanically. Now, why did you make the change? You say first that was put on there, parts 4 as a lock and jamb nut to prevent the additional jarring and loosening of the brackets, so that they would automatically, by said jarring, adjust themselves, and then you say you took those off and simply riveted over the top of the nuts D'. Now, why was the change, and why did you have the first thought?

A. We took those lock nuts off so there would be no adjustment made to that bracket; that is why we took the lock nuts off.

Q. (By the COURT.) Why did you put them on there?

A. I said the first thought was to hold them in position in case they should loosen up. To prevent any adjustment being made, we cut them off and riveted those over so we couldn't move them. Of course, we shouldn't have let it gone out like that, but there was no intention, [415] absolutely, of making any adjustment to that roll member.

Q. (By Mr. LYON.) Now, Mr. Brookhart, you know absolutely all you have to do to make one of those adjustments is to put on a small wrench and turn those nuts and that bolt.

A. You can't move that member without demolishing the machine.

Q. You can move one of those nuts by putting a wrench on there and turning the thread.

A. You mean you want to know if you can take that nut off?

(Testimony of Charles F. Brookhart.)

Q. No; I said you could loosen the nut and run it up for an eighth of an inch or less, and slide the two parts up or down, and then turn it down again with a small wrench.

A. You could loosen up that nut, but you would destroy your thread by doing so.

Q. Wouldn't your thread go back down and hold it?

A. I wouldn't think so, no.

Q. Were you ever called upon to replace the bolts and nuts that were on any one of those adjusting brackets in the Porterville machine to-day?

A. They have not ever been.

Q. You are not aware of the fact that in December last one of those nuts by an ordinary wrench with very slight pressure was loosened by myself and re-set after adjusting one of the rolls a full quarter of an inch, as measured by a grader gauge, and then put back in the place? [416]

A. I know nothing about it at all.

Q. Never tried it at all, did you?

A. No, sir; I never did.

Q. Now, I believe you told us that the feed end of these Porterville machines, the roller there was closer to the grading belt than at the foot or last delivery end; is that correct, so that the entire roller section is inclined with relation to the horizontal movement or line of movement or plane of the traveling grader belt.

A. Yes; if my memory serves me right, the small fruit comes out where the fruit is delivered on first;

(Testimony of Charles F. Brookhart.)

that would be the end closer to the end of the table, and as you get away, would be increased sizes.

Q. And then how much higher at the last grade opening than at the first grade opening at the receiving end of the machine?

A. Well, I should say about an inch and a quarter to an inch and a half; I couldn't say only approximately.

Q. Now, the standard difference in the grades is affected by a difference of one-eighth of an inch in the width of the grade opening, isn't it?

A. I believe at Porterville they had a difference as much as a quarter.

Q. In each grade? A. In some grades.

Q. Well, I say the standard grade. I am speaking of standard grade. [417]

A. As far as I know, they are.

Q. And an adjustment of one-eighth of an inch to the roller toward or away from the belt will affect a whole grade in the sizing of oranges?

A. Let me have that question again.

The COURT.—I don't think that is important.

Mr. LYON.—He is an expert.

A. I don't know anything about the grading of fruit. I only know about the mechanical construction. I don't do the adjustment of the rolls.

Q. Then you had nothing to do at all with the alignment and adjustment of the roller ways of these Porterville or Mid-California machines?

A. Only supervising the construction.

Q. And you don't know what the difference be-

(Testimony of Charles F. Brookhart.)

tween the different grade openings was?

A. Well, I know the standard is approximately about an eighth of an inch; I don't know what these were set at.

Q. Then you don't know, as a matter of fact, whether a flexing, if you call it that, of these joints, a minute fraction of an inch, less than an eighth of an inch, would be practical or impractical, or whether from the practical standpoint changing the grade could be effected by that kind of a machine, do you?

A. All I am testifying is the effect on those bearings for changing that roller bearing. Of course, there is a [418] provision made under the belt, conveying member, to get your adjustment, and there is absolutely no necessity for making any change on the roller member. If there was, they wouldn't put in the means for getting it underneath, which is very simple. There is no call for any adjustment of the roller member, and there is no intention of any adjustment there.

Q. Now, how long have you been employed by the Parker Machine Works and George D. Parker?

A. Well, I have been there ever since he took charge of the shop, but I don't remember what year that was; 1909, I think; I am not positive of that.

Q. It was either 1909, 1910 or 1908.

A. I was with the shop—of course, I have been there 11 years.

Q. And you are still in his employ?

A. I am in his employ at present.

(Testimony of Charles F. Brookhart.)

Q. And you have testified in other cases as an expert witness?

A. I don't know as an expert. I have testified in cases.

Q. You have testified as an expert in the Box Nailing Machine case, haven't you?

A. I guess they call me that. I wouldn't take the honor.

Q. (By the COURT.) Well, were you called on to give [419] your opinion upon some things?

A. Yes, sir; I was called on for my opinion. If that constitutes an expert witness, I guess I was.

The COURT.—We will take a little recess of about five minutes.

(Recess.)

Q. (By the COURT.) Now, as I understand here, you take that Exhibit 4, these bolts D', the nuts of them are swollen?

A. Yes, sir; riveted over the top of the nut. [420]

Q. Now, do I understand you to say you couldn't loosen that up so as to slide that slot without destroying that bolt?

A. The tendency would not be that way.

Q. Couldn't that be worked two or three times without destroying the bolt?

A. Oh, it might possibly be worked that many times.

Q. If you unscrewed that bolt, the bolt would cut its way through the bolt—the nut would cut its way through the bolt for a time, when you turned it around once or twice and then turned it back again,

(Testimony of Charles F. Brookhart.)

and swelling the end of the bolt again?

A. That might be possible, yes.

Q. Now, isn't it the practice of machinists to swell the nuts of bolts instead of putting on a lock nut?

A. Not if they wish to remove parts so fastened together.

Q. I know, but to keep it from shaking loose.

A. From the jar and shock, yes, sir.

Q. They swell the nut of the bolt?

A. The custom is to put jamb nuts on so it can't loosen up; it has been my experience.

Q. I don't know how machinists do. I know how farmers do it in thrashing machines.

A. It is probably because you have no bolt long enough to put that nut on.

Mr. LYON.—Right in that connection, I have been unfortunate [421] in the past few years in having to wear glasses and the nuts have become loose, and I have always riveted them down that same way. I found they turned too much—too dead easy.

The WITNESS.—What I wish to say here is that if we intended to move those after we once fastened them, if we intended to move them, we couldn't move them without putting a lock nut on.

Q. (By Mr. LYON.) You did put that lock nut on like the nut 4.

A. I have reference to these nuts.

Q. Now, as to the other one. Didn't you originally put the lock nuts 4 on, as shown in Plaintiff's Exhibit 5, for the very purpose we are speaking about?

(Testimony of Charles F. Brookhart.)

A. Yes; we have put them on so they couldn't be moved, and then for fear that they would be moved we made this change.

Q. Now, you say these slotted brackets and castings, those are cast in the rough, and that also these bearings like the sketch that you have produced here for the connection of the ends, and I think that sketch is Defendants' Exhibit "N," those parts are cast in the rough, too, are they? A. Yes, sir.

Q. Not machined at all?

A. They are machined before they are used.

Q. Well, how much are they machined on the inside?

A. The bearing where it works on the bracket, the casting [422] that goes in the end of the wood roller, is called a female bearing; that end is bored out to make it the proper size. The bottom is faced off, and then the hubs of the bracket, one on each side, is machined with another tool and is called the male end, and that is finished to size that forms the bearing. The roll rotates on the bracket.

Q. But the screw holes of the female part of that are not in any manner machined, are they?

A. Not machined.

Q. They are in the rough?

A. They are chilled.

Q. Now, there must therefore be some looseness in there or you couldn't fit a square rod into them, isn't that true?

A. They are made just large enough so this half-inch square will fit through there without driving.

(Testimony of Charles F. Brookhart.)

Q. And that will allow more or less flexing of those rods, isn't that true?

A. If the roller members were supported by the square shaft, they wouldn't be possible of flexing, but I had reference to the member of the roller end that is fastened on the end of this bearing.

Q. Then, as a matter of fact, you can still raise the whole bearing up and it will still run?

A. I wouldn't admit it would run, because I know we had trouble in that so-called flexible bearing on that sizer installed in the Riverside Heights. We didn't get them in [423] line and we had to replace them.

Q. And you are still running those with the flexion, aren't you?

A. I don't know of any change; I don't know anything about that.

Q. Now, there is more or less distortion or flexion of this whole shaft or line of roller section on each one of these machines in the 35 or 40 feet of it, isn't there?

A. Well, I don't know as you would say there is any flexion. Those brackets are lined up so the roller will revolve freely without any friction.

Q. There isn't any rotation of these square pieces in their square holes. The rotation all comes on the bearing portion that is on the end of the top of this slotted bracket, isn't that true?

A. The purpose of the square steel in there is it is rolled on the end and forms a continuous rotating member.

(Testimony of Charles F. Brookhart.)

Q. And if one of those rolls is slightly out of line and the next one is slightly the other way, it will still rotate without over distortion of that square rod, isn't that true? Say that one of them had a sixteenth of an inch out on one side and the other was a sixteenth on the other to correspond?

A. We aim to prevent any chance of those being out of line. We put them in the jig and bore them.

Q. Answer my question.

A. It is possible that the square part of the roll would [424] be a little out of line with the square opposite side of the adjacent member.

Q. (By the COURT.) What do you call it in mechanics when a shaft is bent? Do you call that an elbow?

A. Well, it depends on the degree of the bend. If it is bent 'way around it is called an L.

Q. I know, but a shaft gets out of line so it does not run true. What do you call that?

A. We just call it a crooked shaft, I guess.

Q. Now, is there any crook in this?

A. No, sir; no crook in that at all. You couldn't size fruit if that roller went out of line, because if the fruit runs up on the high side, it will run under.

Mr. ACKER.—That would form an eccentric surface.

A. It would form an eccentric surface.

Q. What you call an eccentric or a cam.

Q. (By Mr. LYON.) Calling your attention now to Exhibit Number 8, the side of that in the bins shows only four of the removable bin partitions, is that correct?

(Testimony of Charles F. Brookhart.)

A. Yes; there are only four in place.

Q. And Exhibit Number 6 shows a much larger number?

A. A much larger number in place, but they are not in place for operation.

Q. Well, they can be placed in any position along there that the operator desires?

A. There is one bin board furnished for each section of [425] the roller.

Q. And those can be put anywhere along from the width of the smallest orange up to several feet in length, slid right along the machine?

A. Well, you mean while the machine is in operation?

Q. At any time that you wish to shove them, unless the fruit is right heavy against the side towards which you want to move it? A. Yes.

Q. They can be adjusted absolutely at the will of the operator? A. Yes.

Q. And that adjustment was intended to be with relation to where the fruit was to be delivered from a given barrier board, I believe you call it, wasn't it? You refer to the boards marked H in Plaintiff's Exhibit Number 5 as barrier boards.

A. Yes; that is what we call a barrier board; in this photograph, of course, placed wrong.

Q. And which end, or near which end of such barrier board there is a bolt passing through it?

A. Yes, sir; sort of a wooden bolt.

Q. And the lower end of that will pass through the slot between the two bolts? A. Yes, sir.

(Testimony of Charles F. Brookhart.)

Q. And as a matter of fact, those boards can be placed in [426] the very positions shown in this photograph, Plaintiff's Exhibit 5, can they?

A. Yes.

Q. And there can be practically any arrangement of those that is desired by the operator, can't there?

A. You can place the boards anywhere you want, but you can't obtain the function for which they are made placed at that angle, because you would change the angle of it. In other words, those two bolts are a certain distance from center to center, and you place those boards on an angle in which the center of this slot—the distance from the center of that slot would register according to the distance from the center of the boards. [427]

Q. The barrier boards in figure 5 have these bolts in the slots, haven't they, those on the left-hand side that are inclined to the longitudinal extension of the belt?

A. One of the boards evidently has both bolts in the slot. The other evidently didn't register in the slot, and we didn't get it in. The third one only shows one bolt.

Q. The one that is up in the photograph. It may be that the slot is not quite wide enough for the head or hook, as you called it, on the head of the bolt.

A. It is a hook bolt to spring on the top.

Q. And the hook might not have been the right size to slide through the top?

A. I wouldn't say as to that. It looks as though it wouldn't register as to the slot, and we couldn't get it in.

(Testimony of Charles F. Brookhart.)

Q. Now, are these barriers H at the right hand side of this photograph, Plaintiff's Exhibit No. 5, in the positions that you have seen them while these Porterville graders were in use?

A. Well, they were placed longitudinally with the belts. Of course, I don't know if they were placed in the right relationship to the fruit aperture; I can't say as to that, but they are supposed to be placed parallel to those belts.

Q. Now, your attention has been directed to a patent to Ellithorpe on direct examination, and you produced a model here. Did you ever see a fruit grader in use like that [428] model?

A. No; I never saw one in use like it.

Q. You have been in the business of manufacturing and installing fruit graders the last eleven years, I believe you said? A. No, sir.

Q. Well, what portion of that time?

A. I said I worked with the machine works I am with at present for that length of time, but only in the manufacture of sizers during the last three or four years.

Q. And during that time have your activities been confined exclusively to California?

A. Just what do you mean by that?

Q. Have you also been outside of the State of California for Mr. Parker during that time?

A. I have not.

Q. You never saw a machine like that in use anywhere in the packing industry in California, did you? A. No, sir; I never have.

(Testimony of Charles F. Brookhart.)

Q. Did you have that patent or device before you when you were making the Porterville machines?

A. No, sir; I did not.

Q. You had seen Mr. Stebler's machines?

A. Yes, sir; I have seen Mr. Stebler's machines.

Q. And you had seen the infringing machines that were possessed by the Riverside Heights Orange Growers Association? [429] A. Yes, sir.

Q. And you knew of the installation that was made by Mr. Parker for the Pasadena Orange Growers Association, didn't you?

A. Well, yes, I knew he had installed sizers there.

Q. Did you make drawings for that machine also?

A. No, sir.

Q. Do you know the trap door arrangement that he first put on those machines for adjusting the belt toward and away from the roller sections?

A. I can't say that I can describe that.

Q. You know there was a trap door effect?

A. I know there was some sort of a device for flexing the belt, but I don't know what it was.

Q. And you know that he nailed that up and didn't use it in Pasadena machines, don't you?

A. No, sir; I don't know. I don't know but what it is in use to-day, so far as I am personally concerned.

The COURT:—Is there in evidence a drawing of this thing that goes up between the belt in the defendant's machine that raises and lowers it?

Mr. LYON.—There is a sketch of it, that is all; a sketch of Mr. Knight's.

(Testimony of Charles F. Brookhart.)

Q. You made this model of the Ellithorpe device in accordance with all the knowledge and light that you had of the building of a grader, and in connection with your [430] reading of the Ellithorpe patent, did you?

A. Yes, sir; that was the best I could do.

Q. That is the best grader that, following the teachings of the Ellithorpe patent, you could make?

A. I tried to follow the disclosures of the Ellithorpe patent in constructing that model, yes, sir.

Mr. LYON.—You may take the witness, Mr. Acker.

Redirect Examination.

(By Mr. ACKER.)

Q. Your attention was directed on cross-examination to what is termed jamb nuts as disclosed by complainant's photo exhibits. Is my understanding of your testimony correct that these jamb nuts were used during the aligning of the machine, the setting of it up, to hold the roller member in position as it was aligned throughout the length of the grader?

Mr. LYON.—That is objected to as leading and suggestive.

The COURT.—I will overrule it.

Mr. LYON.—Note an exception.

A. Answer the question? Well, my idea of the function of that was merely to hold it in place while we were aligning it.

Q. (By Mr. ACKER.) If there had been any intent, or if the defendants' machines had been constructed and installed with an intent to have any ad-

(Testimony of Charles F. Brookhart.)

justment of the roller-wall member of the apparatus after it had been in use, what was the [431] purpose of providing for an adjustment of the carrier belt?

Mr. LYON.—That is objected to as argumentative and not redirect examination. The witness has been fully all over that; he told us all he could tell us, both on direct and cross.

The COURT.—I think it is asking the witness to argue the case.

Q. (By Mr. ACKER.) The model exhibit which has been introduced in evidence of the Ellithorpe patent was made, I understand, by you, from the disclosure and solely from the disclosure of the Ellithorpe patent?

A. Yes, sir; that is correct.

Mr. ACKER.—That is all, Mr. Brookhart.

Mr. LYON.—That is all.

Testimony of N. J. Ofstad, for Defendants.

N. J. OFSTAD, a witness called in behalf of the defendants, being first duly sworn, testified as follows:

Mr. LYON.—Just a moment. I will ask counsel for defendants if in order to show clearly the joint of these machines between the rollers, if Mr. Parker will not produce a set of the rollers and one of those connections. He has them on hand and would readily do it, and save us waiting and adjourning the case to get one of them; I mean that square rod, and so forth. If the defendant wants the Court to have fully before him that structure, he can readily bring

(Testimony of N. J. Ofstad.)

one of [432] those up here.

Mr. ACKER.—I can't do it unless we adjourn—
Mr. Parker would have to go to Riverside.

The COURT.—Can't you telegraph to Riverside,
or telephone down there to send up those castings?

Mr. ACKER.—Mr. Parker says he does not think
there are any at all in the place.

Direct Examination.

(By Mr. ACKER.)

Q. Please state your name, age, residence and occupation.

A. My name is Nicholas J. Ofstad; age 42; residence, Riverside.

Q. What position did you occupy during the year 1915 and the early part of 1916?

A. Why, I held the position as foreman from November 1st, 1915, until Christmas, with the Porterville Citrus Association.

Q. The Porterville Citrus Association?

A. At Porterville.

Q. Can you state, Mr. Ofstad, whether there is in use in the Porterville Citrus Association an apparatus for the sizing of fruit which was supplied and installed by Mr. Parker? A. Yes, sir.

Q. When was that machine installed and placed in operation? A. November 20th. [433]

Q. 1915? A. 1915.

Q. Please describe in your own language the said apparatus.

A. Why, this machine consists of a one-sizer roll in several sections sufficient for the number of sizes

(Testimony of N. J. Ofstad.)

required that we use in our business, underneath which is a carrier belt, which is an adjunct to this sizer, and in addition to that is the bins which the fruit drops into after sizing. The sizer, as a whole, is so far as the packing-house man is concerned—gave as much satisfaction as anything we ever had.

The COURT.—You will have to speak a little louder, Mr. Witness; there is so much noise here.

A. The machine, as a whole, so far as my view as this packing-house foreman goes, gave the best satisfaction of any machine I ever used in that house. It had all the necessary features about it to give us the proper sizing and dropping the fruit into the bins.

Q. (By Mr. ACKER.) What was the construction of that rotary wall member of the grade runway of the sizer?

A. The construction of the rotary member of the sizer was practically one roller in different sections, forming the equivalent to a solid shaft, or a solid roller the entire length of the machine.

Q. How was the roller driven, the roller member of the machine? [434]

A. The roller was driven by power from the lower end.

Q. Please state whether or not there was any flexibility permitted the roller member of the run-way?

Mr. LYON.—That is objected to as leading and suggestive, and calling for the conclusion of the witness, and not for a statement of facts.

The COURT.—I think that is a statement of fact,

(Testimony of N. J. Ofstad.)

whether there was any flexibility to it. Overruled.

Mr. LYON.—Note an exception.

A. Why, there is no flexibility to the rollers at all.

Q. (By Mr. ACKER.) Did you have charge of the operations of those machines, Mr. Ofstad?

A. Yes, sir.

Q. And they were under your charge throughout the working period of the season? A. Yes, sir.

Q. Now, what means were employed, if any, in the said machines, for varying the discharge outlets for the sized fruit?

A. Why, there was a means provided underneath the belt; there was an iron plate about 15 inches long, about 3 inches wide, I should judge, that were fastened underneath the belt or the table, which the belt was resting on, and that plate was fastened by brackets to this table, and that plate had a screw with the lock nuts on, so in getting my adjustment for the proper sizes which I wanted, I simply operated those [435] lock nuts which operated this plate.

Q. That is, you raised and lowered the plate over which the belt traveled? A. Yes, sir.